10–5–95
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Federal Register

Thursday
October 5, 1995

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WHO: Sponsored by the Office of the Federal Register.

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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[Two Sessions]

WHEN:	October 17 at 9:00 am and 1:30 pm
WHERE:	Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS:	202–523–4538

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Executive Order 12975 of October 3, 1995

Protection of Human Research Subjects and Creation of National Bioethics Advisory Commission

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Review of Policies and Procedures.* (a) Each executive branch department and agency that conducts, supports, or regulates research involving human subjects shall promptly review the protections of the rights and welfare of human research subjects that are afforded by the department's or agency's existing policies and procedures. In conducting this review, departments and agencies shall take account of the recommendations contained in the report of the Advisory Committee on Human Radiation Experiments.

(b) Within 120 days of the date of this order, each department and agency that conducts, supports, or regulates research involving human subjects shall report the results of the review required by paragraph (a) of this section to the National Bioethics Advisory Commission, created pursuant to this order. The report shall include an identification of measures that the department or agency plans or proposes to implement to enhance human subject protections. As set forth in section 5 of this order, the National Bioethics Advisory Commission shall pursue, as its first priority, protection of the rights and welfare of human research subjects.

(c) For purposes of this order, the terms ''research'' and ''human subject'' shall have the meaning set forth in the 1991 Federal Policy for the Protection of Human Subjects.

Sec. 2. *Research Ethics.* Each executive branch department and agency that conducts, supports, or regulates research involving human subjects shall, to the extent practicable and appropriate, develop professional and public educational programs to enhance activities related to human subjects protection, provide forums for addressing ongoing and emerging issues in human subjects research, and familiarize professionals engaged in nonfederally-funded research with the ethical considerations associated with conducting research involving human subjects. Where appropriate, such professional and educational programs should be organized and conducted with the participation of medical schools, universities, scientific societies, voluntary health organizations, or other interested parties.

Sec. 3. *Establishment of National Bioethics Advisory Commission.* (a) There is hereby established a National Bioethics Advisory Commission (''NBAC''). NBAC shall be composed of not more than 15 members to be appointed by the President. NBAC shall be subject to the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

(b) The President shall designate a Chairperson from among the members of NBAC.

Sec. 4. *Functions.* (a) NBAC shall provide advice and make recommendations to the National Science and Technology Council and to other appropriate government entities regarding the following matters:

(1) the appropriateness of departmental, agency, or other governmental programs, policies, assignments, missions, guidelines, and regulations as they relate to bioethical issues arising from research on human biology and behavior; and

(2) applications, including the clinical applications, of that research.

(b) NBAC shall identify broad principles to govern the ethical conduct of research, citing specific projects only as illustrations for such principles.

(c) NBAC shall not be responsible for the review and approval of specific projects.

(d) In addition to responding to requests for advice and recommendations from the National Science and Technology Council, NBAC also may accept suggestions of issues for consideration from both the Congress and the public. NBAC also may identify other bioethical issues for the purpose of providing advice and recommendations, subject to the approval of the National Science and Technology Council.

Sec. 5. *Priorities.* (a) As a first priority, NBAC shall direct its attention to consideration of: protection of the rights and welfare of human research subjects; and issues in the management and use of genetic information, including but not limited to, human gene patenting.

(b) NBAC shall consider four criteria in establishing the other priorities for its activities:

(1) the public health or public policy urgency of the bioethical issue;

(2) the relation of the bioethical issue to the goals for Federal investment in science and technology;

(3) the absence of another entity able to deliberate appropriately on the bioethical issue; and

(4) the extent of interest in the issue within the Federal Government.

Sec. 6. *Administration.* (a) The heads of executive departments and agencies shall, to the extent permitted by law, provide NBAC with such information as it may require for purposes of carrying out its functions.

(b) NBAC may conduct inquiries, hold hearings, and establish subcommittees, as necessary. The Assistant to the President for Science and Technology and the Secretary of Health and Human Services shall be notified upon establishment of each subcommittee, and shall be provided information on the name, membership (including chair), function, estimated duration, and estimated frequency of meetings of the subcommittee.

(c) NBAC is authorized to conduct analyses and develop reports or other materials. In order to augment the expertise present on NBAC, the Secretary of Health and Human Services may contract for the services of nongovernmental consultants who may conduct analyses, prepare reports and background papers, or prepare other materials for consideration by NBAC, as appropriate.

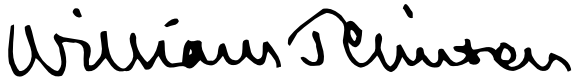
(d) Members of NBAC shall be compensated in accordance with Federal law. Members of NBAC may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

(e) To the extent permitted by law, and subject to the availability of appropriations, the Department of Health and Human Services shall provide NBAC with such funds as may be necessary for the performance of its functions. The Secretary of Health and Human Services shall provide management and support services to NBAC.

Sec. 7. *General Provisions.* (a) Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act that are applicable to NBAC, except that of reporting annually to the Congress, shall be performed by the Secretary of Health and Human Services, in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) NBAC shall terminate two years from the date of this order unless extended prior to that date.

(c) This order is intended only to improve the internal management of the executive branch and it is not intended to create any right, benefit, trust, or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.



THE WHITE HOUSE,
October 3, 1995.

[FR Doc. 95–24921
Filed 10–3–95; 2:11 pm]
Billing code 3195–01–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV95–916–3FIR]

Nectarines and Fresh Peaches Grown in California; Expenses and Assessment Rate for the 1995–96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as final, without change, the provisions of the interim final rule which authorized expenses and established an assessment rate for the Nectarines Administration Committee and the Peach Commodity Committee (Committees) under Marketing Order Nos. 916 and 917 for the 1995–96 fiscal year. Authorization of these budgets enables the Committees to incur expenses that are reasonable and necessary to administer their programs. Funds to administer the program are derived from assessments on handlers.

EFFECTIVE DATE: March 1, 1995, through February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Karen T. Chaney, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: 202–720–5127; or J. Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721, telephone: 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 916 (CFR Part 916) regulating the handling of nectarines grown in California and Marketing Agreement and Order No. 917 (7 CFR Part 917) regulating the handling of fresh peaches grown in California. The agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, nectarines and peaches grown in California are subject to assessments. It is intended that the assessment rates specifies herein will be applicable to all assessable nectarines and peaches handled during the 1995–96 fiscal year, which began March 1, 1995, through February 29, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 688c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, or any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 handlers of nectarines and peaches regulated under the marketing order each season and approximately 1,800 producers of these fruits in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

The nectarine and peach marketing orders, administered by the Department, require that the assessment rates for particular fiscal year apply to all assessable nectarines and peaches handled from the beginning of such year. Annual budgets of expenses are prepared by the Committees, the agencies responsible for local administration of their respective marketing order, and submitted to the Department for approval. The members of the Committees are nectarine and peach handlers and producers. They are familiar with the Committees' needs and with the cost for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committees' budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of nectarines and peaches. Because these rates are applied to actual shipments, they must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Nectarines Administrative Committee met on May 4, 1995, and unanimously recommended total expenses of $3,683,031 for the 1995–96 fiscal year. In comparison, this is $161,604 less than $3,844,635 expenses amount that was recommended for the 1994–95 fiscal year.

The Committee also unanimously recommended an assessment rate of

$0.1850 per 25-pound container or equivalent for the 1995–96 fiscal year, which is $0.5 cent higher than the assessment rate that was approved for the 1994–95 fiscal year. The assessment rate, when applied to anticipated shipments of 16,860,000 25-pound containers or equivalent of nectarines would yield $3,119,100 in assessment income. Adequate funds exits in the Committee's reserve to cover additional expenses.

Major expense categories for the 1995–96 nectarine budget include $340,025 for salaries and benefits, $1,534,593 for domestic market development $99,117 for production and cultural research, and $855,000 for inspection. Funds in the reserve at the end of the 1995–96 fiscal year's expenses.

The Peach Commodity Committee also met May 4, 1995, and unanimously recommended total expenses of $3,736,531, for the 1995–96 fiscal year. In comparison, this is $230,804 less than the $3,967,335 expenses amount that was recommended for the 1994–95 fiscal year.

The Committee also unanimously recommended an assessment rate of $0.19 per 25-pound container or equivalent for the 1995–96 fiscal year, which is the same assessment rate that was approved for the previous fiscal year. The assessment rate, when applied to anticipated shipments of $16,982,000 25-pound containers or equivalent of peaches, would yield $3,226,580 in assessment income. Adequate funds exist in the Committee's reserve fund to cover additional expenses

Major expense categories for the 1995–96 fiscal period are $340,024 in salaries and benefits, $1,534,593 for domestic market development, $99,117 for research, and $900,000 for inspection. Funds in the reserve at the end of the 1995–96 fiscal year, estimated at $335,864, will be within the maximum permitted by the order of on fiscal year's expenses.

An interim final rule concerning this action was published in the August 21, 1995 Federal Register [60 FR 43352], with a 30 day comment period ending September 30, 1995. No comments were received.

While this action will impose some additional costs on handlers, the cost are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. It is found that the specified expenses for the marketing orders covered in their rule are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

After consideration of all relevant material presented, including the Committee's recommendations, and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because the Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1995–96 fiscal year began on March 1, 1995, and the marketing orders require that the rates of assessment for the fiscal year apply to all assessable nectarines and peaches handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committees at public meetings. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Pears, Peaches, Reporting and recordkeeping requirements

PART 916—NECTARINES GROWN IN CALIFORNIA

1. Accordingly, the interim final rule amending 7 CFR Part 916 which was published at 60 FR 43350 on August 21, 1995, is adopted as a final rule without change.

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

2. Accordingly, the interim final rule amending 7 CFR Part 917 which was published at 60 FR 43350 on August 21, 1995, is adopted as a final rule without change.

Dated: September 28, 1995.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–24710 Filed 10–4–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 208, 212, 214, 236, 242, 245, 248, 274a, and 299

[INS No. 1683–94; A.G. Order No. 1986–95]

RIN 1115–AD86

Entry of Aliens Needed as Witnesses and Informants; Nonimmigrant S Classification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with respect for comments; Correction.

SUMMARY: On August 25, 1995, the Immigration and Naturalization Service (''the Service'') published an interim rule with request for comments in the Federal Register at 60 FR 44260–44271. Although comments were requested, the Service did not provide the public with a deadline date for submitting comments. Accordingly, to ensure that the public has ample opportunity to fully review and comment on the interim rule, the Service is requesting that comments be submitted on or before December 4, 1995.

DATES: This interim rule is effective August 25, 1995. Written comments must be submitted on or before December 4, 1995.

ADDRESSES: Please submit written comments in triplicate to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS number 1683–94 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Katharine Auchincloss-Lorr Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

Dated: September 28, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–24734 Filed 10–4–95; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL ELECTION COMMISSION

[Notice 1995–13]

11 CFR Parts 100, 106, 109 and 114

Express Advocacy; Independent Expenditures; Corporation and Labor Organization Expenditures

AGENCY: Federal Election Commission.

ACTION: Final rules; Announcement of Effective Date.

SUMMARY: On July 6, 1995, the Commission published the text of revised regulations defining the term ''express advocacy'' and describing certain nonprofit corporations that are exempt from the prohibition on independent expenditures. 60 FR 35292. These regulations implement portions of the Federal Election Campaign Act of 1971, as amended. The Commission announces that the rules are effective as of October 5, 1995.

EFFECTIVE DATE: October 5, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Today, the Commission is announcing the effective date of new regulations defining the term ''express advocacy'' and describing certain nonprofit corporations that are exempt from the prohibition on independent expenditures. The new rules are being incorporated into parts 100, 106, 109 and 114 of the existing regulations.

Section 438(d) of Title 2, United States Code requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on June 30, 1995. Thirty legislative days expired in the House of Representatives on September 21, 1995. Thirty legislative days expired in the Senate on September 8, 1995.

Announcement of Effective Date: 11 CFR 100.17, 100.22, 106.1(d), 109.1(b)(1), (2) and (3), 114.2(b) and 114.10, as published at 60 FR 35292 (July 6, 1995), are effective as of October 5, 1995.

Dated: September 29, 1995.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 95–24700 Filed 10–4–95; 8:45 am]

BILLING CODE 6715–01–M

11 CFR Part 110

[Notice 1995–14]

Communications Disclaimer Requirements

AGENCY: Federal Election Commission.

ACTION: Final rule and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission has revised its regulations that govern disclaimers on campaign communications. The revisions clarify how these rules apply to coordinated party expenditures; broadly define ''direct mail'' in this context; require a statement of who paid for a covered communication, the cost of which is exempt from the Federal Election Campaign Act's contribution and expenditure limits; require a disclaimer on all communications included in a package of materials that are intended for separate distribution; and clarify the meaning of ''clear and conspicuous'' as that term is used in these rules.

DATES: Further action, including the publication of a document in the Federal Register announcing the effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act [''FECA'' or ''the Act''] at 2 U.S.C. 441d(a) requires a disclaimer on communications by any person that expressly advocate the election or defeat of a clearly identified federal candidate, or solicit contributions, through any form of general public political advertising. The Commission is revising the implementing regulations, which are found at 11 CFR 110.00, to address issues that have arisen since the rules were last amended, and to clarify their scope and applicability.

The Commission published a Notice of Proposed Rulemaking [''Notice'' or ''NPRM''] on proposed amendments to the disclaimer rules on October 5, 1994. 59 FR 50708. Comments in response to this Notice were received from Robert Alan Dahl; the Democratic National Committee; a joint comment from the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee; the Internal Revenue Service; the National Association of Broadcasters; the Ohio Right to Life Political Action Committee; United States Representative Carolyn B. Maloney; United States Representative Thomas E. Petri; and Wilson Communication Services. The Commission held a public hearing on March 8, 1995, at which five witnesses presented testimony on the issues addressed in the NPRM.

Section 438(d) of Title 2, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of the FECA be transmitted to the Speaker of the House of Representatives and the President of the Senate for a 30 legislative day review period before they are finally promulgated. These regulations were transmitted to Congress on October 2, 1995.

Explanation and Justification

The FECA at 2 U.S.C. 441d(a) requires disclaimers on communications by any person that expressly advocate the election or defeat of a clearly identified federal candidate, or solicit contributions, through any form of general public political advertising. In most instances the disclaimer must state both who paid for the communication and whether it was authorized by any candidate or authorized committee.

A primary purpose of this rulemaking was to simplify the implementing regulations to this statutory requirement. A number of revisions have accordingly been made, to clarify their scope and applicability. However, after reviewing the comments and testimony presented at the hearing, the Commission has determined that its present regulation is in most instances the most reasonable alternative at this time. A detailed analysis of the new and revised provisions appears below.

Please note that these revisions are limited to 11 CFR 110.11(a). Paragraph 110.11(b), which deals with newspaper and magazine charges for campaign advertisements, has not been amended.

Part 110—Contribution and Expenditure Limitations and Prohibitions

Section 110.11 Communications; Advertising

General Requirements

The language of former paragraph (a)(1) has largely been retained. However, the last sentence of the former paragraph (a)(1), which deals with placement of the disclaimer, and former paragraph (a)(1)(iv)(B), solicitations by separate segregated funds [''SSF''], have been moved to new paragraphs (a)(5)(i) and (a)(7), respectively.

The NPRM sought comments on a number of different approaches,

including: A rebuttable presumption that communications by certain political committees that mention a clearly identified federal candidate contain express advocacy, and thus trigger the section 441d(a) disclaimer requirements; and reading the FECA so as to require disclaimers on all communications by all political committees, whether or not they contain express advocacy.

None of the commenters who addressed these issues supported the presumption or any of the other proposed changes, although one suggested the Commission could expand the ''paid for by'' requirements based on its authority to monitor campaign spending. The Commission has determined that adopting the presumption of express advocacy would likely not eliminate the need for case by case examination of challenged communications, and concerns also exist with regard to the other proposals. For this reason the Commission has decided to leave the general disclaimer requirements largely intact at this time. The Commission has submitted legislative recommendations suggesting that Congress might want to consider legislation to address this situation.

Phone Banks

The NPRM also sought comment on a proposal to insert phone banks in the listing of types of activities that constitute general public political advertising. This proposal would have had the effect of requiring oral disclaimers as part of phone bank campaign communications.

Two Members of Congress who commented on these rules supported this proposal. Another commenter asked the Commission to clarify what information a multicandidate committee should include in an oral authorization statement if some but not all of the candidates supported by that committee have authorized a communication.

The Commission considered including phone banks in the listing of types of activities that constitute general public political advertising when it prepared the final rules, but could not reach a majority decision by the required four affirmative votes. See 2 U.S.C. 437c(c). Consequently, this proposal has not been included in the final rules.

Coordinated Party Expenditures

The FECA at 2 U.S.C. 441a(d) permits political party committees to make expenditures on behalf of party candidates in excess of the generally applicable contribution limits set forth at 2 U.S.C. 441a(a). New paragraph (a)(2) clarifies the disclaimer requirements for communications paid for as coordinated party expenditures.

If a state or national party committee chooses not to make the coordinated expenditures permitted by section 441a(d), it may assign its right to do so to a designated agent, such as the senatorial campaign committee of the party. *FEC* v. *Democratic Senatorial Campaign Committee*, 454 U.S.C. 27 (1981). Paragraph (a)(2)(i) clarifies that the disclaimer on a communication made as a coordinated party expenditure should identify the committee that made the actual expenditure as the person who paid for the communication, regardless of whether that committee was acting as a designated agent or in its own capacity.

Paragraph (a)(2)(ii) states that communications made pursuant to 2 U.S.C. 441a(d) prior to the date a party's candidate is nominated need state only who paid for the communication; i.e., no authorization statement is required. The commenters who addressed this issue favored this approach. Please note, however, that this does not change the Commission's long-standing conclusion that such communications count against the committee's coordinated party expenditure limits.

Definition of ''Direct Mailing''

A definition for the term ''direct mailing'' has been added at new paragraph (a)(3). For purposes of these requirements, ''direct mailing'' is broadly defined to include any mailing that consists of more than 100 substantially similar pieces of mail. While the NPRM suggested 50 pieces as the number to trigger this requirement, the Commission believes limiting this to mailings of more than 100 pieces more accurately reflects the size and scope of current campaign operations.

One commenter and witness at the hearing asked that the Commission clarify what is meant by the term ''substantially similar.'' Technological advances now permit what is basically the same communication to be personalized to include the recipient's name, occupation, geographic location, and similar variables. The Commission considers communications to be ''substantially similar'' if they would be the same but for such individualization.

Exempt Activity

New paragraph (a)(4) requires a statement of who paid for the communication on covered communications by a candidate or party committee whether or not they qualify as exempt activities under 11 CFR 100.8(b)(10), (16), (17), or (18). The NPRM proposed requiring an authorization statement on such communications, as well.

Most of the comments that addressed this issue disagreed with the proposed approach. However, the intent of the FECA is that those activities by state and local party committees or candidates that qualify as ''exempt'' under 2 U.S.C. 431(8)(B)(v), (x), (xi), and (xii) not count towards the FECA's contribution and expenditure limits. Requiring a ''paid for by'' statement does not conflict with that intent.

Both the disclaimer rules and the exempt activity provisions contain definitions of general public political advertising and direct mail, although in the former case the list describes covered communications, while in the latter case the list describes communications that do not qualify for exemption. However, these definitions are broader under the disclaimer rules than under the exempt activity provisions. Thus, certain communications covered by the exempt activity provisions, such as phone banks and yard signs, are still general public political advertising for purposes of the disclaimer rules. The Commission notes, however, that some exempt activities will continue to fall under the small items exception, e.g., pins and bumper stickers, and therefore will not require a disclaimer.

The ''Clear and Conspicuous'' Requirement

New paragraph (a)(5) provides guidance on the meaning of the term ''clear and conspicuous'' as that phrase is used in this section. The NPRM proposed that, consistent with the Commission's 1993 rulemaking addressing what constitutes ''best efforts'' to obtain identifying information about certain campaign contributors (*see* 2 U.S.C. 432(i); 11 CFR 104.7; 58 FR 57725 (Oct. 27, 1993)), a disclaimer would not be considered ''clear and conspicuous'' if it was in small type in comparison to the remainder of the material, or if the printing was difficult to read or if the placement was easily overlooked.

Several commenters pointed out that the ''comparable size'' requirement, while appropriate for the solicitations addressed in the ''best efforts'' rules, may not be appropriate for communications that, for example, consist only of two lines of large type. The Commission has accordingly deleted this language from the final rule, while retaining the other guidelines. That is, a disclaimer is now stated not to be ''clear and conspicuous'' if the printing is difficult to read or if the

placement is easily overlooked. Technical requirements for televised communications are set forth in new paragraph (a)(5)(iii), discussed *infra.*

Placement of Disclaimer

New paragraph (a)(5)(i) states that the disclaimer need not appear on the front or cover page of a communication as long as it appears within the communication, except on communications such as billboards that contain only a front face. This provision formerly appeared in paragraph (a)(1) of this section.

Packaged Materials

New paragraph (a)(5)(ii) clarifies that all materials included in a package that would require a disclaimer if distributed separately must contain the required disclaimer, even if they are included in a package with solicitations or other materials that already have a disclaimer. Questions have arisen in the past as to whether a single disclaimer per package would satisfy the purposes of this requirement.

One commenter and witness at the hearing sought further clarification on how this will be interpreted. All items intended for separate distribution (e.g., a campaign poster included in a mailing of campaign literature) are covered by this requirement.

Televised Communications

New paragraph (a)(5)(iii) responds to a commenter's request that the Commission incorporate into the text of these rules the Federal Communication Commission's [''FCC''] disclaimer size requirements for televised political advertisements concerning candidates for public office. These requirements, which are set forth at 47 CFR 73.1212(a)(2)(ii), require in any such advertisement that the sponsor be identified with letters equal to or greater than four (4) percent of the vertical picture height that air for not less than four (4) seconds. The new rule states that disclaimers in a televised communication shall be considered clear and conspicuous if they meet these requirements.

In *Dalton Moore,* 7 FCC Rcd 3587 (1992), the FCC explained that twenty (20) scan lines meets the four (4) percent requirement. Also, FCC staff has advised the Commission that the four (4) percent/twenty (20) lines requirement applies to each line of type, and that if the type is upper and lower case, the requirement applies to the smaller (lower case) type.

One commenter, while correctly noting that the FCC and not the FEC has authority over these technical requirements, nevertheless requested that the Commission modify them. However, it is impossible for one agency to amend another's rules. Also, the FCC conducted a lengthy rulemaking, in which the FEC participated, before deciding that the current standards were appropriate. 57 FR 8279 (Mar. 9, 1992).

Exceptions

New paragraph (a)(6) lists the exceptions to the general requirements. Former 11 CFR 110.11(a)(2) has been broken down into new paragraphs (a)(6)(i) and (a)(6)(ii), which address the ''small item'' and ''impracticable item'' exceptions, respectively. In addition, the ''impracticable item'' provision, which formerly included ''skywriting, watertowers or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable,'' has been amended to specifically include ''wearing apparel,'' such as T-shirts or baseball caps, that contain a political message.

While no comments were received on this issue, the question continues to arise as to whether such items require a disclaimer. Since in many instances it is impracticable to include disclaimers on wearing apparel, the Commission believes this further exception is appropriate.

Consistent with the Notice, new paragraph (a)(6)(iii) clarifies that checks, receipts and similar items of minimal value that do not contain a political message and that are used for purely administrative purposes do not require a disclaimer.

Activities by Separate Segregated Funds or Their Connected Organizations

New paragraph (a)(7) corresponds to former 11 CFR 110.11(a)(1)(iv)(B). It exempts from the disclaimer requirements solicitations for contributions to an SSF from those persons the fund may solicit under the applicable provisions of 11 CFR part 114, or communications to such persons, because this does not constitute general public political advertising. This language encompasses mailings by a corporation or labor organization to the corporation's or labor organization's restricted class, as well as comparable activities conducted by membership organizations and trade associations pursuant to 11 CFR 114.7 and 114.8.

Other Issues

Disclaimers on the Internet

In AO 1995–9, the Commission determined that Internet communications and solicitations that constitute general public political advertising require disclaimers as set forth in 2 U.S.C. 441d(a) and former 11 CFR 110.11(a)(1). These communications and others that are indistinguishable in all material aspects from those addressed in the advisory opinion will now be subject to the requirements of paragraph (a)(1) of this section.

Disclaimers on ''Push Polls''

Two commenters and several witnesses at the hearing discussed the possibility that the Commission require disclaimers on ''push polls.'' This term has generally been used to refer to phone bank activities or written surveys that provide false or misleading information about a candidate under the guise of conducting a legitimate poll. For example, if the person being polled states a preference for candidate X, the poll might ask whether X would still be the preferred choice if ''you knew he or she had a drunken driving record,'' ''a history of recreational drug use,'' ''was soft on crime,'' or the like. Such slanted surveys can result in both skewed poll results (if a poll is in fact conducted) and damage to the candidate's reputation.

One of the commenters, Congresswoman Maloney, has introduced a bill, H.R. 324 in the 104th Congress, that would include phone banks in the listing of types of communications set forth in 2 U.S.C. 441d(a) that trigger the disclaimer requirements. As discussed above, the Commission proposed in the NPRM that phone banks be added to the comparable listing in the disclaimer rules, but during consideration of the final rules, the Commission did not reach a majority decision by the required four affirmative votes. Consequently, the final disclaimer rules do not apply to push polls conducted by using phone banks.

The question of requiring disclaimers during telephone push polling also involves significant legal and constitutional issues that have not been put out for notice and comment as required by the Administrative Procedure Act at 5 U.S.C. 553. As noted by some of the witnesses, it may require amendments to the FECA before the Commission can take further action. For example, it does not appear that all push polls contain ''express advocacy'' or contribution solicitations, a critical point under these rules.

Thus, the new regulations only require disclaimers for push polls that qualify as general public political advertising and that either contain a

solicitation or express advocacy of a clearly identified candidate.

Certification of no Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached final regulations will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that any affected entities are already required to comply with the Act's requirements in this area.

List of Subjects

11 CFR Part 110

Campaign Funds, Political Candidates, Political Committees and Parties.

For reasons set out in the preamble, Subchapter A, chapter I of Title 11 of the Code of Federal Regulations is amended as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for 11 CFR Part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, and 441h.

2. Part 110 is amended by revising paragraph (a) of section 110.11 to read as follows:

§ 110.11 Communications; advertising (2 U.S.C. 441d).

(a)(1) *General rules.* Except as provided at paragraph (a)(6) of this section, whenever any person makes an expenditure for the purpose of financing a communication that expressly advocates the election or defeat of a clearly identified candidate, or that solicits any contribution, through any broadcasting station, newspaper, magazine, outdoor advertising facility, poster, yard sign, direct mailing or any other form of general public political advertising, a disclaimer meeting the requirements of paragraphs (a)(1) (i), (ii), (iii), (iv) or (a)(2) of this section shall appear and be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of persons who paid for and, where required, who authorized the communication.

(i) Such communication, including any solicitation, if paid for and authorized by a candidate, an authorized committee of a candidate, or its agent, shall clearly state that the communication has been paid for by the authorized political committee; or

(ii) Such communication, including any solicitation, if authorized by a candidate, an authorized committee of a candidate or an agent thereof, but paid for by any other person, shall clearly state that the communication is paid for by such other person and is authorized by such candidate, authorized committee or agent; or

(iii) Such communication, including any solicitation, if made on behalf of or in opposition to a candidate, but paid for by any other person and not authorized by a candidate, authorized committee of a candidate or its agent, shall clearly state that the communication has been paid for by such person and is not authorized by any candidate or candidate's committee.

(iv) For solicitations directed to the general public on behalf of a political committee which is not an authorized committee of a candidate, such solicitation shall clearly state the full name of the person who paid for the communication.

(2) *Coordinated Party Expenditures.*

(i) For a communication paid for by a party committee pursuant to 2 U.S.C. 441a(d), the disclaimer required by paragraph (a)(1) of this section shall identify the committee that makes the expenditure as the person who paid for the communication, regardless of whether the committee was acting in its own capacity or as the designated agent of another committee.

(ii) A communication made by a party committee pursuant to 2 U.S.C. 441a(d) prior to the date the party's candidate is nominated shall satisfy the requirements of this section if it clearly states who paid for the communication.

(3) *Definition of ''direct mailing.''* For purposes of paragraph (a)(1) of this section only, ''direct mailing'' includes any number of substantially similar pieces of mail but does not include a mailing of one hundred pieces or less by any person.

(4) *Exempt Activities.* For purposes of paragraph (a)(1) of this section only, the term ''expenditure'' includes a communication by a candidate or party committee that qualifies as an exempt activity under 11 CFR 100.8(b)(10), (16), (17), or (18). Such communications, unless excepted under paragraph (a)(6) of this section, shall clearly state who paid for the communication but do not have to include an authorization statement.

(5) *Placement of Disclaimer.* The disclaimers specified in paragraph (a)(1) of this section shall be presented in a clear and conspicuous manner, to give the reader, observer or listener adequate notice of the identity of the person or committee that paid for, and, where required, that authorized the communication. A disclaimer is not clear and conspicuous if the printing is difficult to read or if the placement is easily overlooked.

(i) The disclaimer need not appear on the front or cover page of the communication as long as it appears within the communication, except on communications, such as billboards, that contain only a front face.

(ii) Each communication that would require a disclaimer if distributed separately, that is included in a package of materials, must contain the required disclaimer.

(iii) Disclaimers in a televised communication shall be considered clear and conspicuous if they appear in letters equal to or greater than four (4) percent of the vertical picture height that air for not less than four (4) seconds.

(6) *Exceptions.* The requirements of paragraph (a)(1) of this section do not apply to:

(i) bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed;

(ii) skywriting, watertowers, wearing apparel or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; or

(iii) checks, receipts and similar items of minimal value which do not contain a political message and which are used for purely administrative purposes.

(7) *Activities by separate segregated fund or its connected organization.* For purposes of paragraph (a)(1) of this section, whenever a separate segregated fund or its connected organization solicits contributions to the fund from those persons it may solicit under the applicable provisions of 11 CFR part 114, or makes a communication to those persons, such communication shall not be considered a form of general public political advertising and need not contain the disclaimer set forth in paragraph (a)(1) of this section.

* * * * *

Dated: October 2, 1995.

Danny Lee McDonald,

Chairman.

[FR Doc. 95–24749 Filed 10–4–95; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–61–AD; Amendment 39–9386; AD 95–20–07]

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) PA24, PA28R, PA30, PA32R, PA34, and PA39 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain The New Piper Aircraft, Inc. (Piper) PA24, PA28R, PA30, PA32R, PA34, and PA39 series airplanes. This action requires repetitively inspecting the main gear side brace studs for cracks and replacing any cracked main gear side brace stud. Several reports of main gear side brace stud cracks on the affected airplanes, including seven incidents where the main landing gear (MLG) collapsed, prompted this action. The actions specified by this AD are intended to prevent a MLG collapse caused by main gear side brace stud cracks, which, if not detected and corrected, could result in loss of control of the airplane during landing operations.

EFFECTIVE DATE: November 17, 1995.

ADDRESSES: Information that applies to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper PA24, PA28R, PA30, PA32R, PA32RT, PA34, PA39, and PA44 series airplanes was published in the Federal Register on February 22, 1995 (60 FR 9799). The action proposed to require repetitively inspecting (using dye penetrant or magnetic particle methods) the main gear side brace studs for cracks, and replacing any cracked main gear side brace stud.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the seven comments received from four different commenters.

Piper proposes that the AD require inspecting the Models PA32R–300, PA34–200, and PA34–200T airplanes equipped with the 9/16-inch stud and that the AD exempt the PA28R series airplanes from the repetitive inspections. Piper states that, based on its data regarding the service history of the affected airplanes, all failures and main gear side brace stud cracks occurred on airplanes equipped with the 9/16-inch stud. The proposal would require inspecting both the 5/8-inch diameter stud and the 9/16-inch stud. The FAA partially concurs. The PA28R series airplanes may have either the 9/16-inch stud or the 5/8-inch stud installed. All PA28RT series airplanes have 5/8-inch diameter studs installed at manufacture. Although no incidents regarding failures or cracks on main gear side brace studs involving Piper PA28R series airplanes have been received, the FAA has determined that PA28R series airplanes equipped with the 9/16-inch stud are of the same type design as the PA32R and PA34 series airplanes equipped with the 9/16-inch stud. Therefore, the AD will continue to affect the PA28R series airplanes with 9/16-inch studs installed. The FAA does concur that repetitive inspections of affected airplanes with a 5/8-inch main side gear stud brace assembly installed are not justified. The AD is changed to require repetitive inspections of the 9/16-inch main gear side brace studs on Piper PA28R, PA32R, and PA34 series airplanes with an option for terminating the inspections by installing a 5/8-inch main gear side brace stud bracket assembly. This AD does not apply to the PA32RT and PA44 series airplanes.

One commenter recommends that the FAA supply additional information in the AD to verify the part number (P/N) of the main gear side brace stud on the PA28, PA32R, and PA34 series airplanes. The FAA concurs that additional information would be helpful in identifying the main gear side brace stud P/N. A note has been added to the AD specifying that there is no way of determining the main gear side brace P/N without removing the stud from the bracket assembly and measuring the shank diameter of the stud. If the shank diameter is 9/16-inch, then the main gear side brace stud is either P/N 95299–00 or P/N 95299–02.

Another commenter questions the availability of replacement 9/16-inch main gear side brace studs for all the affected airplanes. The FAA contacted the manufacturer to verify that sufficient replacement parts are available. Replacement main gear side brace studs for cracked studs are available and shall be installed as follows:

—For the Models PA28R–180, PA28R–200, PA28R–201, PA28R–201T, PA32R–300, PA34–200, and PA34–200T airplanes, the 9/16-inch diameter studs, P/N 95299–00 and P/N 95299–02, are no longer available as replacement parts. A new bracket assembly (P/N 95643–06, P/N 95643–07, P/N 95643–08, or P/N 95643–09, as applicable) must be obtained from the manufacturer and incorporated if a cracked 9/16-inch main gear side brace stud is found on these airplanes. This assembly includes the 5/8-inch main gear side brace stud, and the incorporation of the entire bracket assembly eliminates the need for the repetitive inspections.

—For the Models PA24 and PA24–250 airplanes, main gear side brace stud P/N 20829–00 shall be installed.

—For the Models PA24–260, PA24–400, PA30, and PA39 airplanes, main gear side brace stud P/N 22512–00 shall be installed.

One commenter requests that the FAA include a figure that identifies the area requiring non-destructive inspection. The FAA has added Figure 1 to the AD to comply with this commenter's request.

A commenter recommends that the FAA provide more detail regarding the appropriate inspection method required by the AD. This commenter's concern stems from the allowance to perform either dye penetrant or magnetic particle inspections of the main gear side brace studs. The term ''dye penetrant'' by definition includes the full range of penetrant options from low sensitivity visible or color contrast penetrants to the various higher sensitivity fluorescent penetrants. The FAA concurs that the inspection method should be more detailed in the AD. The AD is revised to require the inspection of the main gear side brace stud using a Type I (fluorescent) penetrant method or using magnetic particle inspection methods. The FAA does not concur that the inspection should only be accomplished using magnetic particle methods, but maintains that the sensitivity of either method will detect main gear side brace stud cracks.

A commenter requests that the FAA clarify the term ''FAA-approved dye penetrant or magnetic particle inspection procedures.'' Information has been added to the AD that specifies that the FAA intends for the inspections to be accomplished at a facility that is

approved by the FAA to perform either dye penetrant or magnetic particle inspections.

One commenter agrees with the proposal, but feels that the FAA should express the compliance time in landings instead of hours time-in-service (TIS). The FAA does not concur. Airplane owners/operators are not required to log the number of landings for this type design airplane. A correlation between the number of landings and the number of flight hours for an airplane fleet is a portion of the information (when available) used by the FAA in establishing appropriate compliance times. The FAA has re-evaluated this information and considers hours TIS as the best method of establishing a compliance time for this AD. The AD is unchanged as a result of this comment.

No comments were received regarding the FAA's estimate of the cost impact upon U.S. operators of the affected airplanes. The FAA did, however, miscalculate the number of airplanes that would be affected by the proposal. Upon further examination, the FAA has determined that 13,200 airplanes will be affected by this AD. No airplane models or serial numbers have been added to the Applicability section of the AD; therefore, this economic information change will not add any additional burden upon U.S. owners/operators of the affected airplanes over that which was already proposed.

In addition to the comments received, the FAA re-evaluated the proposed compliance time and decided that the initial inspection compliance time should be adjusted to account for those operators who already accomplished the inspection. The initial inspection compliance time has been rewritten to give credit to those operators already accomplishing the inspection at least once.

In addition, the FAA has included an inspection to detect an unapproved alteration of the main gear side brace bracket assembly. The FAA received documentation of several mechanics taking the 9/16-inch stud bracket assembly and modifying it to accommodate the 5/8-inch stud. The unapproved alteration is easy to detect because of the number of installed bushings. The 9/16-inch main gear side brace stud bracket assembly contains two bushings and the 5/8-inch main gear side brace stud bracket assembly contains one bushing. The FAA has included a note in the AD to specify that the ''PA34–200T Illustrated Parts Catalog (Revision dated May 1983, Piper P/N 761 589), Figure 45, Item 52, illustrates this one and two-bushing installation.''

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the compliance change, the economic information correction, the addition of the inspection for unapproved main gear side brace stud bracket assemblies, minor editorial corrections, and the changes referenced above pertaining to the comments received as a result of the notice of proposed rulemaking. The FAA has determined that the addition, changes, and minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 13,200 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 5 workhours per airplane to initially inspect both the right and left main landing gear side brace studs, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,960,000. This figure represents the cost of the initial inspection, and does not reflect costs for repetitive inspections or possible replacements. The FAA has no way of determining how many main gear side brace studs may need replacement or how many repetitive inspections each owner/operator may incur.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

95–20–07 The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Amendment 39–9386; Docket No. 93–CE–61–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

1. All serial numbers of Models PA24, PA24–250, PA24–260, PA24–400, PA30, and PA39 airplanes;

2. The following model and serial number airplanes that are not equipped with a part number (P/N) 95643–06, 95643–07, 95643–08, or 95643–09 bracket assembly, which includes a part number 78717–02 main landing gear side brace stud:

Model	Serial numbers
PA28R–180.	28R–30002 through 28R–31135, and 28R–7130001 through 28R–7130013.
PA28R–200.	28R–35001 through 28R–35820, and 28R–7135001 through 28R–7635539.
PA28R–201.	28R–7737002 through 28R–7737096.
PA28R–201T.	28R–7703001 through 28R–7703239.
PA32R–300.	32R–7680001 through 32R–7780444.
PA34–200.	All serial numbers.
PA34–200T.	34–7570001 through 34–7770372.

Note 1: This AD applies to each airplane identified in the preceding applicability revision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or

repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required initially as follows, and thereafter as specified in the body of this AD:

1. For the affected Models PA28R–180, PA28R–200, PA28R–201, PA28R–201T, PA32R–300, PA34–200, and PA34–200T airplanes: Within the next 100 hours time-in-service (TIS) after the effective date of this AD or, if the main gear side brace stud has already been inspected as specified in this AD, within 500 hours TIS after the last inspection, whichever occurs later.

2. For the affected Models PA24, PA24–250, PA24–260, PA24–400, PA30, and PA39 airplanes: Within the next 100 hours time-in-service (TIS) after the effective date of this AD or, if the main gear side brace stud has already been inspected as specified in this AD, within 1,000 hours TIS after the last inspection, whichever occurs later.

To prevent main landing gear (MLG) collapse caused by main gear side brace stud cracks, which, if not detected and corrected, could result in loss of control of the airplane during landing operations, accomplish the following:

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

(a) Remove both the left and right main gear side brace studs from the airplane in accordance with the instructions contained in the Landing Gear section of the maintenance manual, and inspect each main gear side brace stud for cracks, using Type I (fluorescent) liquid penetrant or magnetic particle inspection methods. Inspections must be accomplished by a facility approved by the FAA to accomplish the applicable inspection method. Figure 1 of this AD depicts the area where the sidebrace stud is to be inspected.

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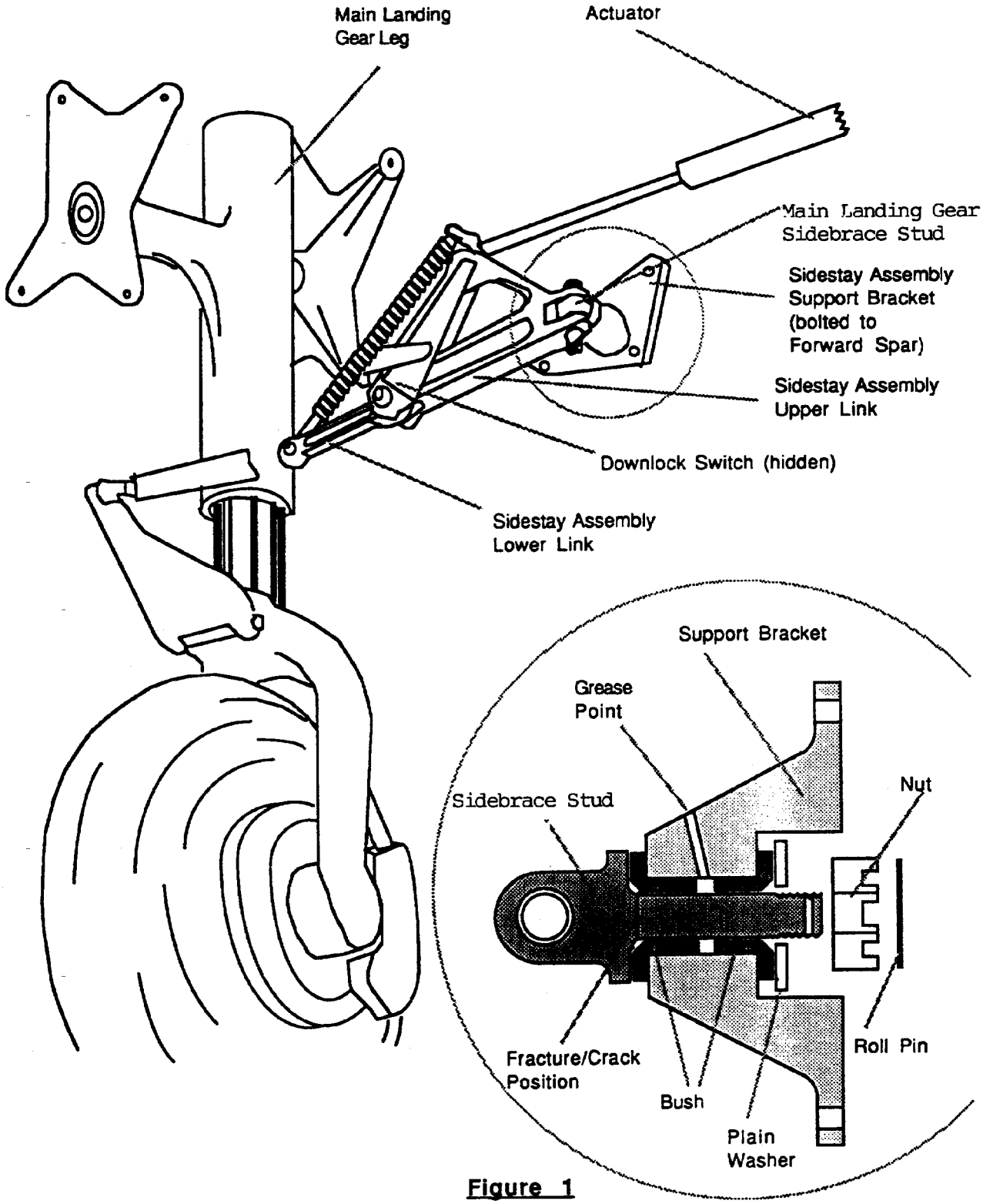

Figure 1

Note: This figure is provided to depict the area of the sidebrace stud to be inspected. This is not intended to represent the configuration of all models affected.

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Note 3: All affected Models PA24 and PA24–250 airplanes were equipped at manufacture with P/N 20829–00 main gear side brace studs. All affected Models PA24–260, PA24–400, PA30, and PA39 airplanes were equipped at manufacture with P/N 22512–00 main gear side brace studs. A P/N 95299–00 or P/N 95299–02 stud installed in an applicable Model PA28R–180, PA28R–200, PA28R–201, PA28R–201T, PA32R–300, PA34–200, or PA34–200T airplane may be identified by removing the stud and measuring the shank diameter of the stud. If the shank measures 5/8-inch in diameter, a P/N 78717–02 main gear side brace stud is installed. The FAA is aware of no methods of determining the main gear side brace stud P/N while the stud is installed.

(1) For any main gear side brace stud found cracked, prior to further flight, replace the cracked stud with an FAA-approved serviceable part (part numbers referenced in the table in paragraph (c) of this AD) in accordance with the instructions contained in the Landing Gear section of the applicable maintenance manual, and accomplish one of the following, as applicable:

(i) Reinspect and replace (as necessary) as specified in paragraph (c) of this AD; or

(ii) For the affected Models PA28R–180, PA28R–200, PA28R–201, PA28R–201T, PA32R–300, PA34–200, and PA34–200T airplanes, the P/N 95299–00 or 95299–02 main gear side brace studs are no longer manufactured. A new main gear side brace stud bracket assembly, P/N 95643–06, P/N 95643–07, P/N 95643–08, or P/N 95643–09, as applicable, must be installed if cracks are found as specified in paragraph (a)(1) of this AD. No repetitive inspections will be required by this AD for these affected airplane models when this bracket assembly is installed.

(2) For the affected Models PA28R–180, PA28R–200, PA28R–201, PA28R–201T, PA32R–300, PA34–200, and PA34–200T airplanes, inspect the main gear side brace assembly to ensure that the appropriate number of bushings are installed:

(i) For the 9/16-inch main gear side brace stud, P/N 95299–00 or P/N 95299–02, two bushings must be installed in the bracket assembly.

(ii) For the 5/8-inch main gear side brace stud, P/N 78717–02, one bushing must be installed in the bracket assembly.

(iii) Prior to further flight, replace any bracket assembly where the inappropriate number of bushings are installed.

Note 4: The PA34–200T Illustrated Parts Catalog (Revision dated May 1983, Piper P/N 761 589), Figure 45, Item 52, illustrates this one and two-bushing installation.

(3) For any main gear side brace stud not found cracked, prior to further flight, reinstall the uncracked stud in accordance with the instructions contained in the Landing Gear section of the applicable maintenance manual, and reinspect and replace (as necessary) as specified in paragraph (c) of this AD.

(b) Owners/operators of the affected Models PA28R–180, PA28R–200, PA28R–201, PA28R–201T, PA32R–300, PA34–200, and PA34–200T airplanes may have a new main gear side brace bracket assembly, P/N 95643–06, P/N 95643–07, P/N 95643–08, or P/N 95643–09, as applicable, installed at any time to terminate the inspection requirement of this AD.

(c) Reinspect both the left and right main gear side brace studs, using Type I (fluorescent) liquid penetrant or magnetic particle inspection methods. Inspections must be accomplished by a facility approved by the FAA to accomplish the applicable inspection method. Replace any cracked stud or reinstall any uncracked stud as specified in paragraphs (a)(1) and (a)(3) of this AD, respectively:

Part No. installed	TIS inspection interval	Model airplanes installed on
20829–00	1,000 hours	PA24 and PA24–250.
22512–00	1,000 hours	PA24–260, PA24–400, PA30, and PA39.
95299–00 or 95299–02.	500 hours	PA28R–180, PA28R–200, PA28R–201, PA28R–201T, PA32R–300, PA34–200, and PA34–200T.

Note 5: Accomplishing the actions of this AD does not affect the requirements of AD 77–13–21, Amendment 39–3093. The tolerance inspection requirements of that AD still apply for Piper PA24, PA30, and PA39 series airplanes.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Information related to this AD may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(g) This amendment (39–9386) becomes effective on November 17, 1995.

Issued in Kansas City, Missouri, on September 28, 1995.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–24713 Filed 10–4–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8606]

RIN 1545–AR23

Definition of Qualified Electric Vehicle, and Recapture Rules for Qualified Electric Vehicles, Qualified Clean-fuel Vehicle Property, and Qualified Clean-fuel Vehicle Refueling Property; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations, Treasury Decision 8606, which was published in the Federal Register on Thursday, August 3, 1995 (60 FR 39649). The final regulations are on the definition of a qualified electric vehicle, the recapture of any credit allowable for a qualified electric vehicle, and the recapture of any deduction allowable for qualified clean-fuel vehicle refueling property.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Joanne E. Johnson at (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under sections 30 and 179A of the Internal Revenue Code.

Need for Correction

As published, T.D. 8606 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulation (T.D. 8606), which was the subject of FR Doc. 95–19028, is corrected as follows:

On page 39649, column 1, in the heading, the language ''RIN 1545–AR64'' is corrected to read ''RIN 1545–AR23''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–24781 Filed 10–4–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN 0720–AA21

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Program; Uniform HMO Benefit; Special Health Care Delivery Programs

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: This final rule establishes requirements and procedures for implementation of the TRICARE Program, the purpose of which is to implement a comprehensive managed health care delivery system composed of military medical treatment facilities and CHAMPUS. Principal components of the final rule include: establishment of a comprehensive enrollment system; creation of a triple option benefit, including a Uniform HMO Benefit required by law; a series of initiatives to coordinate care between military and civilian delivery systems, including Resource Sharing Agreements, Health Care Finders, PRIMUS and NAVCARE Clinics, and new prescription pharmacy services; and a consolidated schedule of charges, incorporating steps to reduce differences in charges between military and civilian services. This final rule also includes provisions establishing a special civilian provider program authority for active duty family members overseas. The TRICARE Program is a major reform of the MHSS that will improve services to beneficiaries while helping to contain costs.

EFFECTIVE DATE: November 1, 1995.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Steve Lillie, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 695–3350.

Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. Overview of the TRICARE Program

The medical mission of the Department of Defense is to provide and maintain readiness to provide medical services and support to the armed forces during military operations, and to provide medical services and support to members of the armed forces, their family members, and others entitled to DoD medical care.

Under the current Military Health Services System (MHSS), all care for active duty members is provided or arranged by military medical treatment facilities (MTFs). CHAMPUS-eligible beneficiaries may receive care in the direct care system (that is, care provided in military hospitals or clinics) on a space-available basis, or seek care from civilian health care providers; the government shares in the cost of such civilian care under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). Medicare eligible military beneficiaries also are eligible for care in the direct care system on a space-available basis, and may be reimbursed for civilian care under the Medicare program. The majority of care for military beneficiaries is provided within catchment areas of MTFs, a catchment area being roughly defined as the area within a 40-mile radius around an MTF.

Recently DoD has embarked on a new program, called TRICARE, which will improve the quality, cost, and accessibility of services for its beneficiaries. Because of the size and complexity of the MHSS, TRICARE implementation is being phased in over a period of several years. The principal mechanisms for the implementation of TRICARE are the designation of the commanders of selected MTFs as Lead Agents for 12 TRICARE regions across the country, operational enhancements to the MHSS, and the procurement of managed care support contracts for the provision of civilian health care services within those regions.

Sound management of the MHSS requires a great degree of coordination between the direct care system and CHAMPUS-funded civilian care. The TRICARE Program recognizes that ''step one'' of any process aimed at improving management is to identify the beneficiaries for whom the health program is responsible. Indeed, the dominant feature in some private sector health plans, enrollment of beneficiaries in their respective health care plans, is an essential element. This final rule moves toward establishment of a basic structure of health care enrollment for the MHSS. Under this structure, all health care beneficiaries become participants in TRICARE and classified into one of four categories:

1. Active duty members, all of whom are automatically enrolled in TRICARE Prime, an HMO-type option;
2. TRICARE Prime enrollees, who (except for active duty members) must be CHAMPUS eligible;
3. TRICARE Standard participants, which includes all CHAMPUS-eligible beneficiaries who do not enroll in TRICARE Prime; or
4. Medicare-eligible beneficiaries and other non-CHAMPUS-eligible DoD beneficiaries, who, although not eligible for TRICARE Prime, may participate in many features of TRICARE.

Eventually, we anticipate that there will be a fifth category: participants in other managed care programs affiliated with TRICARE. However, no such affiliations have yet been made.

The second major feature of the TRICARE Program will be the establishment of a triple option benefit. CHAMPUS-eligible beneficiaries will be offered three options: They may (1) enroll to receive health care in an HMO-type program called ''TRICARE Prime;'' (2) use the civilian preferred provider network on a case-by-case basis, under ''TRICARE Extra;'' or (3) choose to receive care from non-network providers and have the services reimbursed under ''TRICARE Standard.'' (TRICARE Standard is the same as standard CHAMPUS.) CHAMPUS-eligible enrollees in Prime will obtain most of their care within the network, and pay substantially reduced CHAMPUS cost shares when they receive care from civilian network providers. Enrollees in Prime will retain freedom to utilize non-network civilian providers, but they will have to pay cost sharing considerably higher than under TRICARE Standard if they do so. Beneficiaries who choose not to enroll in TRICARE Prime will preserve their freedom of choice of provider for the most part by remaining in TRICARE Standard. These beneficiaries will face standard CHAMPUS cost sharing requirements, except that their coinsurance percentage will be lower when they opt to use the preferred provider network under TRICARE Extra. All beneficiaries continue to be eligible to receive care in MTFs, but active duty family members who enroll in TRICARE Prime will have priority over other beneficiaries.

A third major feature of the TRICARE program is a series of initiatives, affecting all beneficiary categories, designed to coordinate care between military and civilian health care systems. Among these is a program of resource sharing agreements, under which a Managed Care Support contractor provides personnel and other

resources to an MTF in order to increase the availability of services. It is our expectation that the Partnership Program, an existing mechanism for increasing the availability of services in MTFs, will be phased out as TRICARE managed care support contracts are implemented. Another TRICARE initiative is establishment of Health Care Finders, which facilitate referrals to appropriate services in the MTF or civilian provider network. In addition, integrated quality and utilization management services for military and civilian sector providers will be insituted. Still another initiative is establishment of special pharmacy programs for areas affected by base realignment and closure actions. These pharmacy programs will include special eligibility for some Medicare-eligible beneficiaries. TRICARE also will feature TRICARE Outpatient Clinics, which will be direct care system resources serving as primary care managers and providing related services. (This final rule also provides a transitional authority for continued operation of PRIMUS and NAVCARE Clinics, which are dedicated contractor-owned and operated clinics, until TRICARE is implemented.) These initiatives will have a major impact on military health care delivery systems, improving services for all beneficiary categories.

The fourth major component of TRICARE is the implementation of a consolidated schedule of charges, incorporating steps to reduce differences in charges between military and civilian services. In general, the TRICARE Program reduces beneficiaries' out-of-pocket costs for civilian sector care. For example, the current CHAMPUS cost sharing requirements for outpatient care for active duty family members include a deductible of $150 per person or $300 per family ($50/$100 for family members of active duty sponsors in pay grades E–4 and below) and a copayment of 20 percent of the allowable cost of the services.

Under TRICARE Prime, which incorporates the ''Uniform HMO Benefit,'' these cost sharing requirements will be replaced, for CHAMPUS beneficiaries who enroll, by a standard charge for most civilian provider network outpatient visits of $12.00 per visit, or $6.00 per visit for family members of E–4 and below sponsors. For CHAMPUS-eligible retirees, their family members and survivors, the current deductible of $150 per person or $300 per family and 25 percent cost sharing for outpatient services will also be replaced by a standard charge, which is likewise $12.00 for most outpatient visits. Retirees, their family members and survivors will also be charged a $230/$460 annual individual/family enrollment fee. Active duty members will face no cost sharing under TRICARE Prime.

Beneficiaries who are not enrolled in TRICARE Prime will also have significant opportunities to reduce expected out-of-pocket costs under CHAMPUS. These opportunities include the new special pharmacy programs, and access to network providers and to TRICARE Outpatient Clinics, on a space-available basis.

One design consideration for TRICARE is the mobile nature of our beneficiary population. Some features of TRICARE, such as the uniformity of the benefit and the consistency of program rules across the country, are crafted with this factor in mind. In the future, we hope to increase the ''portability'' of the TRICARE benefit, by making TRICARE more accessible to beneficiaries who have multiple residences, have family members in several locations, and so forth.

With respect to military hospitals, in the future consideration will be given to establishment of nominal per-visit fees, for some or all retirees, their family members, and survivors, and for some or all types of services for those beneficiaries. Fees would be considered to help control demand for MTF care, to free up capacity and reduce waiting times, and lower the costs of health care.

A user fee can be structured in many different ways, for example, exempting lower income segments of the covered population. Most importantly, the motivation for a fee is to encourage the more efficient use of health care services. When this issue is considered for possible implementation in fiscal year 1988, if the Department decides to establish a nominal fee for some or all outpatient services provided to some or all retirees, their family members, and survivors, a proposed rule will then be issued for public comment.

The TRICARE Program is a major reform of the MHSS—one that will accomplish the transition to a comprehensive managed health care system that will help to achieve DOD's medical mission into the next century.

B. Public Comments

The proposed rule was published in the Federal Register on February 8, 1995. We received 17 comment letters. We thank those who provided comments; specific matters raised by commenters are summarized below in the appropriate sections of the preamble.

II. Provisions of the Rule Regarding the Tricare Program

These regulatory changes are being published as an amendment to 32 CFR Part 199 because the operating details of CHAMPUS will be altered significantly. Our regulatory approach is to leave the existing CHAMPUS rules largely intact and to create new sections 199.17 and 199.18 to describe the TRICARE Program and the uniform HMO benefit. The major provisions of new section 199.17 regarding the TRICARE Program are summarized below. A summary of the relevant proposed rule provision is presented, followed by an analysis of major public comments, and by a summary of the final rule provisions.

A. Establishment of the TRICARE Program (Section 199.17(a))

1. Provisions of Proposed Rule

This paragraph introduces the TRICARE Program, and describes its purpose, statutory authority, and scope. It is explained that certain usual CHAMPUS and MHSS rules do not apply under the TRICARE Program, and that implementation of the Program occurs in a specific geographic area, such as a local catchment area or a region. Public notice of initiation of a Program will include a notice published in the Federal Register.

With respect to statutory authority, major statutory provisions are title 10, U.S.C. sections 1099 (which calls for health care enrollment system), 1097 (which authorizes alternative contracts for health care delivery and financing), and 1096 (which allows for resource sharing agreements). Significantly, the National Defense Authorization Act for Fiscal Year 1995 amended section 1097 to authorize the Secretary of Defense to provide for the coordination of health care services provided pursuant to any contract or agreement with a civilian managed care contractor with those services provided in MTFs. This amendment set the stage for many features of TRICARE, including initiatives to improve coordination between military and civilian health care delivery components and the consolidated schedule of beneficiary charges.

2. Analysis of Major Public Comments

Several commenters objected to the concept that all beneficiaries were ''enrolled,'' and classified into one of five enrollment categories; they suggest that the only true enrollment is in TRICARE Prime.

One commenter questioned implementation of TRICARE in Washington and Oregon effective March 1, 1995, in advance of publication of this final rule.

One commenter suggested that initiation of TRICARE in an area be widely announced, including advance publication in the Federal Register to inform providers how to join preferred provider networks, mailed notice to current providers, and notifications to national associations representing providers. The commenter also suggested that it is inappropriate for DoD to have made decisions on how and in what order TRICARE is to be implemented nationally, in advance of final rule promulgation.

Response. We acknowledge the confusion that arose as a result of some of the explanation in the preamble to the proposed rule. The commenters correctly point out that the only TRICARE option which requires an affirmative ''enrollment'' action is TRICARE Prime. Our intent was to emphasize the all-encompassing nature of TRICARE, and the fact that care for all MHSS beneficiaries will be affected by the advent of TRICARE; in a very real sense, all peacetime care provided or paid for by DoD will become part of TRICARE.

Regarding the implementation of TRICARE in Washington and Oregon on March 1, 1995, prior to promulgation of this final rule, we point out that the program in Washington and Oregon is being implemented under a special demonstration authority (10 U.S.C. 1092) in advance of the promulgation of this rule. If features of the program in Washington and Oregon conflict with the provisions of this final rule, they will be revised after the rule becomes effective.

Regarding notifications to providers about the initiation of TRICARE, we believe that the competitive procurements being conducted for regional managed care support contracts provide ample opportunity for providers to become aware of and involved in the program. We publish advance notices in the Commerce Business Daily, issue formal requests for proposals, and publicize and conduct bidders conferences, in order to inform interested parties as fully as possible.

On the point of DoD making decisions about TRICARE implementation strategies in advance of final rule publication, the promulgation of this rule is entirely separate from operational decisions about the phasing of program implementation. The basic nature of our approach to implementing TRICARE managed care support contracts was directed by Congress, and we reported to Congress in December 1993 on our plan for implementing the program region by region, achieving nationwide coverage in 1997.

3. Provisions of the Final Rule

The final rule clarifies that, while all beneficiaries participate in TRICARE, only the HMO-like option, TRICARE Prime, requires an action on the part of the beneficiary to enroll.

B. Triple Option (Section 199.17(b))

1. Provisions of Proposed Rule

This paragraph presents an overview of the triple option feature of the TRICARE Program. Most beneficiaries are offered enrollment in the TRICARE Prime Plan, or ''Prime.'' They are free to choose to enroll to obtain the benefits of Prime, or not to enroll and remain in the TRICARE Standard Plan, or ''Standard,'' with the option of using the preferred provider network under the TRICARE Extra Plan, or ''Extra.'' When the TRICARE Program is implemented in an area, active duty members will be enrolled automatically in Prime.

2. Analysis of Major Public Comments

None.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

C. Eligibility for Enrollment in Prime (Section 199.17(c))

1. Provisions of Proposed Rule

This paragraph describes who may enroll in the Program. All active duty members are automatically enrolled in Prime; all CHAMPUS-eligible beneficiaries who live in areas covered by TRICARE Prime are eligible to enroll. Since it is likely that priorities for enrollment will be necessary owing to limited availability of Prime, the order of priority for enrollment will be as follows: first priority will be active duty members; second priority will be active duty family members; and third priority will be CHAMPUS-eligible retirees, family members of retirees, and survivors. At this time, TRICARE Prime does not offer enrollment to non-CHAMPUS-eligible beneficiaries.

2. Analysis of Major Public Comments

Several commenters objected to the exclusion of Medicare-eligible military beneficiaries from enrollment eligibility, and questioned the legal basis for such exclusion.

One commenter suggested that enrollment priorities be set nationally rather than locally, with local authority to follow the enrollment priority system only if all eligible beneficiaries cannot be enrolled.

One commenter raised the issue of a CHAMPUS beneficiary with Worker's Compensation coverage related to civilian government employment, receiving care from military providers, asking what effect TRICARE would have on this circumstance.

Response. Regarding the exclusion of Medicare beneficiaries, this is not the Department's preferred position. However, we are unable to offer enrollment to this group without reimbursement from the Medicare trust funds, which would require a statutory revision. Were we to include Medicare-eligible beneficiaries under TRICARE Prime, we would be unable to comply with the cost requirement of section 731 of the National Defense Authorization Act for Fiscal Year 1994. That section requires that the ''Uniform HMO Benefit,'' mandated for TRICARE Prime, must not increase DoD costs. Under law, civilian sector care provided to almost all Medicare beneficiaries is at no expense to DoD because they are not covered by CHAMPUS. TRICARE Prime, however, includes comprehensive civilian sector coverage. Were this to be provided at DoD expense, the additional costs to DoD would be considerable. There is no feasible way to restructure TRICARE Prime to accommodate those costs under the statutory cost neutrality requirement or under current budgetary realities.

With respect to DoD's legal authority to exclude Medicare-eligible beneficiaries from TRICARE Prime, the legal authority for TRICARE Prime, 10 U.S.C. 1097, allows DoD to establish health care plans covering selected health care services or selected beneficiaries. For the reasons explained above, the TRICARE Prime plan adopts the same exclusion of most Medicare beneficiaries as is required by law for CHAMPUS (10 U.S.C. 1086(d)), on which the civilian sector component of TRICARE Prime is based.

Regarding the primacy of national priorities for enrollment, we agree, and reaffirm that the statutory priorities for access to space-available care in MTFs will be used as the national priorities for enrollment; if priorities are needed at the local level owing to limited availability of enrollment during the phase-in of TRICARE, then the statutory priorities will be followed. The only additional prioritizing that is authorized is that, during a phase-in process, priority may be given to family members of members in lower pay grades. Eventually, however, in locations where Prime is offered, all CHAMPUS-eligible

beneficiaries who wish to enroll will be accommodated.

Regarding the effect of TRICARE on beneficiaries with Worker's Compensation coverage, the answer is that we anticipate little change: under TRICARE, MTFs will continue to have authority to bill Worker's Compensation programs and similar parties, and health care from military providers will continue to be subject to availability.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

D. Health Benefits Under Prime (Section 199.17(d))

1. Provisions of Proposed Rule

This paragraph states that the benefits established for the Uniform HMO Benefit option (see section 199.18, Uniform HMO Benefit option) are applicable to CHAMPUS-eligible enrollees in TRICARE Prime.

Under TRICARE, all enrollees in Prime and all beneficiaries who do not enroll remain eligible for care in MTFs. Active duty family members who enroll in TRICARE Prime would be given priority for MTF access over non-enrollees; priorities for other categories of beneficiary would, under the proposed rule, be unaffected by their enrollment. Regarding civilian sector care, active duty member care will continue to be arranged as needed and paid for through the supplemental care program.

2. Analysis of Major Public Comments

Several commenters recommended that preference for MTF care be given to all TRICARE Prime enrollees over all nonenrollees.

Response. We agree that granting preference to MTFs based on enrollment in TRICARE Prime would be an incentive to enroll. In the case of active duty family members, this preference is being granted. However, other considerations must be taken into account when granting such preference for retirees. In particular, because Medicare beneficiaries are not eligible for enrollment in TRICARE Prime, granting such preference would necessarily limit access to MTFs and increase out-of-pocket costs for this large group of DoD beneficiaries. Several options are under consideration to ensure fair and equitable treatment of Medicare-eligible retirees under TRICARE Prime, and we will revisit the issue of access priority as we have more information about these options. In the meantime, we believe that the appropriate course of action is not to base retiree preference for MTFs on enrollment in TRICARE Prime.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

E. Health Benefits Under Extra (Section 199.17(e))

1. Provisions of Proposed Rule

This paragraph describes the availability of the civilian preferred provider network under Extra. When Extra is used, CHAMPUS cost sharing requirements will be reduced. (See Table 2 following the preamble for a comparison of TRICARE Standard, TRICARE Extra, and TRICARE Prime cost sharing requirements.)

2. Analysis of Major Public Comments

No public comments were received relating to this section of the rule.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

F. Health Benefits Under Standard (Section 199.17(f))

1. Provisions of Proposed Rule

This paragraph describes health benefits for beneficiaries who opt to remain in Standard. Broadly, participants in standard maintain their freedom of choice of civilian provider under CHAMPUS (subject to nonavailability statement requirements), and face standard CHAMPUS cost sharing requirements, except when they take advantage of the preferred provider network under Extra. The CHAMPUS benefit package applies to Standard participants.

2. Analysis of Major Public Comments

No public comments were received relating to this section of the rule.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

G. Coordination with Other Health Care Programs (Section 199.17(g))

1. Provisions of Proposed Rule

This paragraph of the proposed rule provided that, for beneficiaries enrolled in managed health care programs not operated by DoD, DoD may establish a contract or agreement with the other managed health care programs for the purpose of coordinating beneficiary entitlements under the other programs and the MHSS. This potentially includes any private sector health maintenance organization (HMO) or competitive medical plan, and any Medicare HMO. Any contract or agreement entered into under this paragraph may integrate health care benefits, delivery, financing, and administrative features of the other managed care plan with some or all of the features of the TRICARE Program. This paragraph is based on 10 U.S.C. section 1097(d), as amended by section 714 of the National Defense Authorization Act for Fiscal Year 1995.

2. Analysis of Major Public Comments

One commenter asked whether this section applied only to managed care plans, or to any medical plan.

Response. To clarify, the section applies only to managed care plans, such as health maintenance organizations. The intent of the provision is to enable MTFs to become participating providers in the networks established by such private plans, or to make other coordinating arrangements, so that military beneficiaries who are enrolled in the private plans may utilize the services of the MTF as part of their managed care enrollment.

The Health Care Financing Administration (HCFA) expressed concerns about the expressed DoD intent to include arrangements with Medicare HMOs under this provision. Further discussions between DoD and the Department of Health and Human Services will be necessary before we complete action on this proposed regulatory provision.

3. Provisions of the Final Rule

The final rule does not include provisions relating to coordination with other health plans. Action is reserved, pending further development.

H. Resource Sharing Agreements (Section 199.17(h))

1. Provisions of Proposed Rule

This paragraph provides that MTFs may establish resource sharing agreements with the applicable managed care support contractors for the purpose of providing for the sharing of resources between the two parties. Internal and external resource sharing agreements are authorized. Under internal resource sharing agreements, beneficiary cost sharing requirements are the same as in MTFs. Under internal or external resource sharing agreements, an MTF commander may authorize provision of services pursuant to the agreement to Medicare-eligible beneficiaries, if this will promote the most cost-effective provision of services under the TRICARE Program.

2. Analysis of Major Public Comments

One commenter suggested that the final rule specify how resource sharing agreements will be established, how providers will be selected, which providers would qualify for resource sharing, and how internal disputes among practitioners would be resolved.

Response. We note that that resource sharing takes place in the context of regional managed care support contracts, established in support of TRICARE. These competitively procured contracts will be the vehicle for selection of providers participating in resource sharing programs, and disputes would be resolved through the contract mechanisms. Any services offered in MTFs or covered by CHAMPUS could, in concept, be subject to resource sharing; hence any CHAMPUS authorized provider category potentially could be part of the program if desired by the local military medical authorities.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule, except for a clarification of the circumstances under which services provided to Medicare beneficiaries are potentially reimbursable by Medicare: Medicare could pay civilian hospital charges in an external resource sharing circumstance.

I. Health Care Finder (Section 199.17(i))

1. Provisions of Proposed Rule

This paragraph establishes procedures for the Health Care Finder, an administrative office that assists beneficiaries in being referred to appropriate health care providers, especially the MTF and civilian network providers. Health Care Finder services are available to all beneficiaries.

2. Analysis of Major Public Comments

One commenter suggested that the health care finder should refer beneficiaries to both network and non-network sources of care, as appropriate for the particular case, and that health care finder staff be experienced, so that beneficiaries may be properly directed.

Response. We do not foresee circumstances in which health care finders would routinely refer beneficiaries to non-network providers. It is in the beneficiary's interest to use a network provider, because of reduced cost sharing, guaranteed participation, and enhanced quality assurance provisions; it is also in the Government's interest to maximize use of network providers, whose services are provided at preferred rates. Of course, health care finders will attempt to assist beneficiaries in finding non-network sources if no network provider is available; this is likely to be an unusual occurrence, because networks typically will have the full range of CHAMPUS authorized services available.

Health care finder staff will be qualified in their areas of responsibility, often with Registered Nurses providing referral services and appropriately trained clerical staff providing administrative support and services.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

J. General Quality Assurance, Utilization Review, and Preauthorization Requirements (Section 199.17(j))

1. Provisions of Proposed Rule

This paragraph emphasizes that all requirements of the CHAMPUS basic program relating to quality assurance, utilization review, and preauthorization of care apply to the CHAMPUS component of Prime, Extra and Standard. These requirements and procedures may also be made applicable to MTF services.

2. Analysis of Major Public Comments

No public comments were received relating to this section of the rule.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

K. Pharmacy Services, Including Special Services in Base Realignment and Closure Sites (Section 199.17(k))

1. Provisions of Proposed Rule

This paragraph establishes two special pharmacy programs, a retail pharmacy network program and a mail service pharmacy program.

An important aspect of the mail service and retail pharmacy programs is that, under the authority of section 702 of the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102–484, there is a special rule regarding eligibility for prescription services. The special rule is that Medicare-eligible beneficiaries, who are normally ineligible for CHAMPUS, are under certain special circumstances eligible for the pharmacy programs. The special circumstances are that they live in an area adversely affected by the closure of an MTF. A provision of the National Defense Authorization Act for Fiscal Year 1995 additionally provides eligibility for Medicare eligible beneficiaries who demonstrate that they had been reliant on a former MTF for pharmacy services.

Under the rule, the area adversely affected by the closure of a facility is established as the catchment area of the treatment facility that closed. The catchment area is the existing statutory designation of the geographical area primarily served by an MTF. The catchment area is defined in law as ''the area within approximately 40 miles of a medical facility of the uniformed services.'' Public Law 100–180, sec. 721(f)(1), 10 U.S.C.A. 1092 note. This is also the geographical basis in the law for nonavailability statements that authorized CHAMPUS beneficiaries who live within areas served by military hospitals to obtain care outside the military facility. 10 U.S.C. 1079(a)(7). Because the purpose of the special eligibility rule for Medicare-eligible beneficiaries is to replace the pharmacy services lost as a consequence of the base closure, and because the 40-mile catchment area is the only geographical area designation established by law to describe the beneficiaries primarily served by a military medical facility, we believe it most appropriate to adopt the established 40-mile catchment area for purposes of the applicability of the special eligibility rule for pharmacy services. Thus, under the rule, Medicare-eligible beneficiaries who live within the established 40-mile catchment area of a closed medical treatment facility are eligible to use the pharmacy programs if available in that area.

There are several noteworthy special rules regarding the area that will be considered adversely affected by the closure of an MTF. First, a 40-mile catchment area generally will apply in the case of the closure of a military clinic, as it does in the case of the closure of a hospital. Recognizing that there may be clinic closure cases involving very small clinics that were not providing any significant amount of pharmacy services to retirees, their family members and survivors, these cases will not be considered to be areas adversely affected by the closure of an MTF. The reason for this is simply that if the facility was not providing a significant amount of services, its closure will not have a noteworthy adverse effect in the area.

The Director, Office of CHAMPUS, may establish other procedures for the effective operation of the pharmacy programs, dealing with issues such as encouragement of the use of generic drugs for prescriptions and of appropriate drug formularies, as well as establishment of requirements for

demonstration of past reliance on an MTF for pharmacy services.

2. Analysis of Major Public Comments

One public comment urged prompt action to implement the program in base closure sites; another commenter suggested establishment of a timetable for defining eligibility and documentation requirements. Another recommended that the definition of beneficiaries affected by the closure of an MTF not be limited to the 40-mile catchment area. Another recommended that eligible Medicare beneficiaries should include all who used the closed pharmacy within the past 12 months.

Response. We agree with the comments provided, and have clarified in the final rule the special rules for eligibility of Medicare beneficiaries for this program.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule, except that it clarifies the procedures for establishing eligibility for Medicare beneficiaries who live outside the former catchment area of a closed facility. Medicare beneficiaries who obtained pharmacy services at a facility in its last 12 months of operation (or the last twelve months during which pharmacy services were available to non-active duty beneficiaries) will be deemed to have been reliant on the facility; they can establish their reliance through a written statement to that effect.

The pharmacy provisions of the rule are part of the Department's efforts to consolidate its pharmacy programs, and move towards a uniform pharmacy component for TRICARE.

L. PRIMUS and NAVCARE Clinics (Section 199.17(1))

1. Provisions of Proposed Rule

The proposed rule added a new section 199.17(1). Under the authority of 10 U.S.C. sections 1074(c) and 1097, this section would authorize PRIMUS and NAVCARE Clinics, which have operated to date under demonstration authority. This provision would have made permanent the PRIMUS and NAVCARE Clinic authority.

In the proposed rule, we proposed that PRIMUS and NAVCARE Clinics would function in a manner similar to MTF clinics that, as under the demonstration project. As such, all beneficiaries eligible for care in MTFs (including active duty members, Medicare-eligible beneficiaries, and other non-CHAMPUS eligible beneficiaries) would be eligible to use PRIMUS and NAVCARE Clincis. For PRIMUS and NAVCARE Clinics established prior to October 1, 1994, CHAMPUS deductibles and copayments would not apply. Rather, military hospital policy regarding beneficiary charges would apply. For PRIMUS and NAVCARE Clinics established after September 30, 1994, the provisions of the Uniform HMO Benefit regarding outpatient cost sharing would apply (see section 199.18(d)(3)). Other CHAMPUS rules and procedures, such as coordination of benefits requirements would apply. The Director, OCHAMPUS, could waive or modify CHAMPUS regulatory requirements in connection with the operation of PRIMUS and NAVCARE Clinics.

2. Analysis of Major Public Comments

Several commenters sought Clarification of the fees applicable to PRIMUS and NAVCARE clinics established after September 30, 1994, whether Medicare eligibles would be allowed to use the clinics or even enroll in TRICARE using PRIMUS or NAVCARE clinics as primary care managers, and whether PRIMUS and NAVCARE clinics will be limited to space-available care for non-enrollees.

Response. The Department has determined that no new PRIMUS or NAVCARE Clinics will be established, so the distinction made in the proposed rule between existing and new clinics is no longer necessary. As TRICARE is implemented over the next few years, existing PRIMUS and NAVCARE Clinics will be phased out; PRIMUS and NAVCARE Clinics may be converted into TRICARE Outpatient Clinics, as described below, or similar clinics may emerge as components of the managed care support contractor's network. TRICARE Outpatient Clinics will be Army, Navy or Air Force military medical treatment facilities (MTFs): the Government will operate the facilities, credential providers, and be liable for care provided therein; the clinic will be staffed with military personnel, civilian Federal employees, or contractors, or a combination of these; the clinic providers will be direct care primary care managers for TRICARE enrollees (see section 199.17(n)(1)); access priority for care in TRICARE Outpatient Clinics will be the same as for MTFs (see section 199.17(d)(1)); cost sharing for services in TRICARE Outpatient Clinics will be the same as in MTFs (see section 199.17(m)(6)); and collections from third-party insurance will be under the provisions of 32 CFR Part 220, which establishes rules for collections by facilities of the Uniformed Services. Incidentally, the Department is developing a financing approach for TRICARE in which MTF funding will be based on a capitated payment per person enrolled with an MTF primary care manager, and TRICARE managed care support contractors will receive a capitated payment per enrollee with a civilian primary care manager. Under this approach, it is our intention to include funding of TRICARE Outpatient Clinics within the MTF capitation, so that their operation will be a part of the direct care system rather than part of the managed care support contract. Any outpatient clinics or similar facilities established or operated by TRICARE managed care support contractors will be components of the civilian provider network, and will utilize the cost sharing requirements specified in section 199.18(d)(3), which establishes outpatient cost sharing requirements for the Uniform HMO Benefit. These include specific dollar copayments for physician office visits and other routine care, mental health visits, ambulatory surgery services, and prescription drugs, as well as cost sharing percentages for durable medical equipment.

Medicare-eligible military beneficiaries will be eligible for care in TRICARE Outpatient Clinics on a space-available basis, but they will not be allowed to enroll in TRICARE Prime (see section 199.17(a)(6)(i)(D)), unless they have dual CHAMPUS-Medicare eligibility.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule, except that it is clarified that operation of a PRIMUS and NAVCARE Clinic will cease upon initiation of a TRICARE program in the location of the PRIMUS or NAVCARE Clinic.

M. Consolidated Schedule of Beneficiary Charges (Section 199.17(m))

1. Provisions of Proposed Rule

This paragraph establishes a consolidated schedule of beneficiary charges applicable to health care services under TRICARE for Prime enrollees (other than active duty members), Standard participants; and Medicare-eligible beneficiaries. The schedule of charges is summarized at Table 1, following the preamble. As demonstrated by the table, TRICARE provides for reduced beneficiary out-of-pocket costs.

Included in the consolidated schedule of beneficiary charges is the ''Uniform HMO Benefit'' design required by law. This is further discussed in the next section of the preamble.

2. Analysis of Major Public Comments

One commenter noted the perception of many military beneficiaries that they were promised perpetual free care for their families when they joined the military service. Several commenters representing beneficiaries raised objections to the preamble section describing DoD's plans to consider user fees in MTFs, for some categories of beneficiaries and for some types of care. One commenter pointed out that mental health cost sharing was not addressed in the schedule, and that cost sharing for Medicare-eligible beneficiaries is unclear. Another commenter questioned whether retirees with service-connected disabilities, who in some cases receive treatment for their condition in MTFs, are in effect being charged for this care via the enrollment fee for TRICARE Prime.

Response. Regarding promises of perpetual free care and the preamble material regarding potential future imposition of fees for certain services in MTFs, we would point out that some elements of the MHSS, notably CHAMPUS, have always had beneficiary charges associated with them, and there has never been a system of unlimited free health care for family members and other beneficiaries. In considering options for the Uniform HMO Benefit, we considered imposition of fees in MTF's; because of the high volume of services provided there, a very small fee could have a dramatic impact on other cost sharing requirements necessary to meet the statutory requirements for budget neutrality. It was decided that we would not propose MTF fees in this rulemaking proceeding, but describe some of the considerations regarding such fees in the preamble to set the stage for a possible future rulemaking action.

Regarding mental health cost sharing, we would point out that the Consolidated Schedule of Beneficiary Charges includes several references to the TRICARE Triple Option cost sharing schedule, and the Uniform HMO Benefit Schedule, where mental health cost sharing requirements are described in detail.

Regarding cost sharing for Medicare beneficiaries, the rules of the Medicare program will generally apply for civilian care (with exceptions under PRIMUS and NAVCARE clinics, the special pharmacy program, and certain resource sharing agreements). The details of cost sharing for private sector services, prescribed under the Medicare program, are not presented here, but are available from any Social Security Administration Office.

Regarding beneficiaries with service-connected disabilities, they may elect to enroll in TRICARE Prime, or continue to exercise their entitlements to CHAMPUS, and to space-available care in MTF's or to receive priority care from Department of Veterans Affairs Medical Centers.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

N. Additional Health Care Management Requirements Under Prime (Section 199.17(n)

1. Provisions of Proposed Rule

This paragraph describes additional health care management requirements within Prime, and establishes the point-of-service option, under which CHAMPUS beneficiaries retain the right to obtain services without a referral, albeit with higher cost sharing. Each CHAMPUS-eligible enrollee will select or be assigned a Primary Care Manager who typically will be the enrollee's health care provider for most services, and will serve as a referral agent to authorize more specialized treatment, if needed. Health Care Finder offices will also assist enrollees in obtaining referrals to appropriate providers. Referrals for care will give first priority to the local MTF; other referral priorities and practices will be specified during the enrollment process.

2. Analysis of Major Public Comments

One commenter noted that enrollees would access MTF care only through their primary care manager, while non-enrollees could seek MTF care unfettered. This would limit access for enrollees to routine care at MTFs and to the additional services sometimes available in MTFs. Additionally, the commenter suggested that variations in MTF primary care capacity in different locations would create disparities in benefits and in access to MTF services.

Another commenter recommended that patient access to his/her medical specialist of choice be guaranteed, and that beneficiaries not be forced to be evaluated and treated for mental illness by non-physicians.

A commenter representing beneficiaries asked how far enrollees could be required to travel outside the area if needed care was unavailable locally.

One commenter questioned how referrals outside the network or area would be carried out, and how beneficiaries would obtain approval for such care.

Response. It is true that the capacity and capabilities of the direct care system of MTFs vary across the country, and that this creates some disparities in access to free health care services. The basic entitlement to CHAMPUS (or to Medicare) fills in many of the ''gaps'' arising from this circumstance; the Government shares in the costs of civilian health care obtained by beneficiaries. TRICARE attempts to further ameliorate disparities in access and cost through creation of an integrated military-civilian health care program. Under TRICARE Prime, outpatient care continues to be free in MTFs, and the Government assumes a greater share of the cost of civilian health care services. It is our firm belief that under a managed health care approach, beneficiaries will receive much better access to needed health care services than they do under the existing approach, in which MTF care and civilian care are largely uncoordinated.

Regarding the comments about access to specialist of choice, requirements to travel to receive care, and referrals for out-of-network care, we emphasize that one of the key features of TRICARE Prime is the assignment of a primary care manager for each enrollee. The primary care manager, supported by the Health Care Finder, will be responsible for providing or arranging all nonemergency care for the enrollee. As specified in section 199.17(n)(2)(iii)(C), when needed referral care is unavailable in MTF, the enrollee will have the freedom to choose a provider from among those in the civilian network, subject to availability. Beneficiaries will be authorized to receive care from providers not affiliated with the network in cases where neither military facilities nor the civilian network can provide the care, pursuant to section 199.17(n)(2)(iii)(E). Mandatory referrals necessitating travel are also addressed in section 199.17(n)(2): they can be required only if the enrollee was informed of the policy at or prior to enrollment. Travel will not be reimbursed, except in the context of the Specialized Treatment Services program. See 32 CFR 199.4(a)(10) and 58 FR 58955 for further information about that program.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

O. Enrollment Procedures (Section 199.17(o))

1. Provisions of Proposed Rule

This paragraph describes procedures for enrollment of beneficiaries other than active duty members, who must enroll. The Prime plan features open season periods during which enrollment is permitted. Prime enrollees will maintain participation in the plan for a 12 month period, with disenrollment only under special circumstances, such as when a beneficiary moves from the area. A complete explanation of the features, rules and procedures of the Program in the particular locality involved will be available at the time enrollment is offered. These features, rules and procedures may be revised over time, coincident with reenrollment opportunities.

2. Analysis of Major Public Comments

One commenter asked us to define the ''significant effect on participant's costs or access to care'' which would trigger an opportunity to change enrollment status under 199.17(0)(3).

One commenter asked if the installment method would be available for payment of the enrollment fee, and urged that no maintenance fee apply if so.

Response. Regarding definition of ''significant effect'' on costs or access, which would trigger an opportunity to change enrollment status, we define a significant effect as follows: a change in cost sharing or access policy expected to result in an increase in average annual beneficiary out-of pocket costs of $100 or more.

Regarding installment payment of enrollment fees, a provision has been added to authorize installment payments; we hope to offer allotment payments in the future. While the rule provides only a general provision in this regard, we would point out that current practice in TRICARE is to offer a quarterly payment option, with the option to pay the full amount remaining at any time; an additional charge of $5.00 is added to each periodic payment to cover the additional administrative costs associated with the installment method. Some beneficiaries have expressed concern about the inclusion of such a ''maintenance fee.'' Our position is that, given that the enrollment fee has been set at the minimum amount needed to comply with statutory requirements of budget neutrality, we cannot ignore the additional costs associated with installment payment methods. We believe it is appropriate, and consistent with private sector practice, to add a small amount to each payment, rather than to spread this cost across all beneficiaries who enroll in TRICARE Prime.

The rule also includes exclusion from TRICARE Prime for one year for failure to make an installment payment on a timely basis, including a grace period. Eligibility for TRICARE Standard and Extra would be unaffected by the exclusion penalty.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule, with several exceptions. Provisions regarding open season enrollment have been broadened to include continuous open enrollment, wherein beneficiaries may enroll at any time, and each enrollee has an individualized, specific anniversary date. In addition, provisions have been added regarding the installment payment option.

P. Civilian Preferred Provider Networks (Section 199.17(p))

1. Provisions of Proposed Rule

This paragraph sets forth the rules governing civilian preferred provider networks in the TRICARE Program. It includes conformity with utilization management and quality assurance program procedures, provider qualifications, and standards of access for provider networks. In addition, the methods which may be used to establish networks are identified.

DoD beneficiaries who are not CHAMPUS-eligible, such as Medicare beneficiaries, may seek civilian care under the rules and procedures of their existing health insurance program. Providers in the civilian preferred provider network generally will be required to participate in Medicare, so that when Medicare beneficiaries use a network provider they will be assured of a participating provider.

2. Analysis of Major Public Comments

Two public comments indicated that the requirement for providers to accept Medicare assignment would adversely affect network development, one suggesting that the requirement was unlawful and repugnant. One commenter indicated that reductions in CHAMPUS payment amounts in recent years will make it increasingly difficult to establish and maintain an adequate network of providers, leading to lower quality providers and dissatisfaction on the part of beneficiaries.

One commenter pointed out that some categories of providers, while not ineligible for Medicare participation, have not participated in Medicare because it is irrelevant to their lines of business. The commenter suggested that, in such cases, the requirement to participate in Medicare should not apply.

One commenter objected to the requirement that preferred providers must meet all other qualifications and requirements, and agree to comply with all other rules and procedures established for the network, suggesting that any such additional requirements must be subjected to the rulemaking process.

One commenter questioned the lack of specificity in 199.17(p)(6) regarding special reimbursement methods for network providers, and recommended additional specificity in the final rule. Another commenter recommended that the rule specify if rate setting methods for network providers will be the same as in standard CHAMPUS, and that any differences in rate setting for the ''any qualified provider method'' be made subject to the rulemaking process.

One commenter recommended that network requirements specify the inclusion of psychiatrists, allowed to provide a full range of diagnostic and treatment services.

One commenter urged that we require that the network contain a sufficient number and mix of all provider types, not just physicians, and explicitly prohibit discrimination against a health care provider solely on the basis of the professional's licensure or certification, to prohibit exclusion of an entire class of health care professional.

One commenter asked who would pay for travel or overnight accommodations if a beneficiary must travel more than 30 minutes from home to a primary care delivery site.

One commenter asked why 199.17(p)(5)(ii) allows a four-week wait for a well-patient visit, and a two-week wait for a routine well-patient visit.

One commenter suggested that the wide latitude in network development methods provided by 199.17(p)(7) would create undesirable inconsistencies across the nation.

One commenter suggested that any qualified provider be allowed into the preferred provider network, regardless of the method used to develop the network.

One commenter recommended that the rule specify if rate setting methods for network providers will be the same as in standard CHAMPUS, and that any differences in rate setting for the any qualified provider method be made subject to the rulemaking process.

Response. Regarding the requirement that providers accept Medicare assignment as a condition of

participation in the TRICARE network, we believe that this requirement is reasonable. Payment amounts under the CHAMPUS and Medicare programs are very similar, so there would not seem to be an economic issue involved. The vast majority of physicians nationally (83 percent in 1993) already participate in Medicare, so there should be a large pool of providers available. For hospitals, CHAMPUS and Medicare participation is linked by statute. Physician participation is not linked for the standard CHAMPUS program, but in the context of establishing a managed care network is entirely appropriate and consistent with statutory authority to establish reasonable requirements for network providers, including acceptance of Medicare assignment.

Regarding the suggestions that some providers may not be Medicare participating providers because it is irrelevant to their line of business, and thus should be exempted from the requirement, we agree that there may be some classes of providers which, while providing services of importance to CHAMPUS beneficiaries, provide no services covered by Medicare. Such a case may be covered by the waiver for ''extraordinary circumstances'' which is included in this provision.

Regarding the comment that any additional requirements established for network providers should be subject to the rule making process, we point out that this provision refers to additional, local requirements established for network providers, consistent with the program-wide rules established in this regulation and other program documents. Further rulemaking activity in this regard is neither necessary nor appropriate.

Regarding the suggestion that we provide additional specificity concerning the special reimbursement methods for network providers, we do not agree that additional specifics should be provided. The rule provides added flexibility to vary payment provisions from those established by regulation, to accommodate local market conditions. To attempt to specify in advance the possible reimbursement approaches would defeat our purpose of providing a flexible mechanism. We also disagree that network rate setting should be the same as under standard CHAMPUS rules; a key aim of managed care programs is to negotiate lower rates of reimbursement with networks of preferred providers.

Regarding the comments which recommended specification of provider types to be included in the network, or suggested anti-discrimination provisions, we point out that section 199.17(p)(5) requires that the network have an adequate number and mix of providers such that, coupled with MTF capabilities, it can meet the reasonably expected health care needs of enrollees. Beneficiaries will have available the full range of needed health care services, and network managers will be responsible for arranging to meet any unanticipated health care needs which cannot be accommodated in the network. We do not think it is appropriate to specify which provider types and how many will be included in the network, because this will vary by location, depending on beneficiary demographics and local health care marketplace conditions.

Regarding payment for travel or overnight accommodations if a beneficiary must travel more than 30 minutes from home to a primary care delivery site, we will not make such payments. Payment for travel is authorized only in association with the specialized treatment services program, under section 199.4(a)(10).

Regarding why 199.17(p)(5)(ii) allows a four-week wait for a well-patient visit, and a two-week wait for a routine well-patient visit, this was a typographical error in the proposed rule. The provision should be, a four-week wait for a well-patient visit, and a one-week wait for a routine visit.

Regarding the comment that the wide latitude in network development methods provided by 199.17(p)(7) would create undesirable inconsistencies across the nation, we point out that a single method is being implemented nationally: competitive solicitation of regional TRICARE support contractors. We expect that alternative methods will be used only to address special circumstances.

Regarding the suggestion that any qualified provider be allowed into the preferred provider network, regardless of the method used to develop the network, we disagree. The rule contains provisions (section 199.17(q)) for using such a method, but our preferred method, which we are implementing, is to establish regional TRICARE support contracts on a competitive basis, with offerors proposing a selective provider network.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule, except for correction of a typographical error; the rule now specifies maximum wait time for a routine visit of one week.

Q. Preferred Provider Network Establishment Under Any Qualified Provider Method (Section 199.17(q))

1. Provisions of Proposed Rule

This paragraph describes one process that may be used to establish a preferred provider network (the ''any qualified provider method'') and establishes the qualifications which providers must demonstrate in order to join the network.

2. Analysis of Major Public Comments

Several commenters urged that the ''any qualified provider'' method not be used in the development of managed care network for DoD.

One commenter recommended that the requirement that providers follow all quality assurance and utilization management procedures established by OCHAMPUS be linked to the requirement that providers must meet all other rules and procedures that are established, publicly announced, and uniformly applied.

Response. As provided in section 199.17(p)(7), there are several possible methods for establishing a civilian preferred provider network, including competitive acquisitions, modification of and existing contract, or use of the ''any qualified provider'' approach described in section 199.17(q). The current method of choice in implementing TRICARE is the first approach: DoD plans to award several regional managed care support contracts in the next few years. The managed care support contractors will establish the civilian provider networks according to the requirements specified in the government's request for proposals (RFP) for each procurement; these RFP requirements will be consistent with the provisions of section 199.17(p). At this point, we do not anticipate any broad use of the ''any qualified provider'' approach; it could be used under special circumstances, however.

A commenter suggested that we link two of the ''any qualified provider'' requirements—section 199.17(q)(2), which specifies that providers must meet all quality assurance and utilization management requirements established pursuant to section 199.17, and section 199.17(q)(4), which requires that providers follow all rules and procedures established, publicly announced and uniformly applied by the commander or other authorized official. A linkage is not appropriate. The former requirement specifically emphasizes some of nationally established regulatory requirements will apply to providers under the ''any qualified provider'' approach. The latter

requirement enables establishment of additional, uniform, local requirements for the ''any qualified provider'' approach. These could include, for example, a requirement for a five percent discount off prevailing CHAMPUS payment amounts, applicable to all providers in the network. The amount of discount feasible would depend on local market conditions and the degree of military presence in the community, hence it would be more appropriate as a local requirement than a nationally established standard.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

R. General Fraud, Abuse, and Conflict of Interest Requirements Under TRICARE Program (Section 199.17(r))

1. Provisions of Proposed Rule

This paragraph establishes that all fraud, abuse, and conflict of interest requirements for the basic CHAMPUS program are applicable to the TRICARE Program.

2. Analysis of Major Public Comments

No public comments were received relating to this section of the rule.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

S. Partial Implementation of TRICARE (Section 199.17(s))

1. Provisions of Proposed Rule

This paragraph explains that some portions of TRICARE may be implemented separately: a program without the HMO option, or a program covering a subset of health care services, such as mental health services.

2. Analysis of Major Public Comments

One commenter suggested that partial implementation of TRICARE would be inconsistent with the Congressional mandate for a uniform benefit across the country, and urged commitment to full implementation of all TRICARE options in all regions.

Response. We are indeed intent upon implementing TRICARE nationally. It would not be inconsistent with Congressional direction to implement TRICARE partially in a location, given that the Congressional mandate for establishment of the Uniform HMO Benefit is to make it applicable throughout the country, to the maximum extent practicable. If local circumstances were to make full implementation impracticable, it might be preferable to implement at least some features of TRICARE.

One potential circumstance for partial implementation of TRICARE is the offering of TRICARE Prime to selected beneficiary groups in remote sites. This would be consistent with the Congressional direction to implement the Uniform HMO Benefit nationally, to the extent practicable. For example, military recruiters are often assigned to duty in locations without MTFs, and thus their families may be at a disadvantage in terms of health care cost or access, compared to most families of active duty members.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule, except that we have clarified that partial implementation of TRICARE may include offering TRICARE Prime to limited groups of beneficiaries in remote sites, and that some of the normal requirements of TRICARE Prime may be waived in this regard.

T. Inclusion of Veterans Hospitals in TRICARE Networks (Section 199.17(t))

This paragraph would provide the basis for participation by Department of Veterans Affairs facilities in TRICARE networks, based on agreements between the VA and DoD.

2. Analysis of Major Public Comments

One public comment was received relating to this section of the rule, applauding the inclusion of VA facilities in TRICARE and urging prompt action to implement the provision.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

U. Cost Sharing of Care for Family Members of Active Duty Members in Overseas Locations (Section 199.17(u))

1. Provisions of Proposed Rule

This paragraph would permit establishment of special CHAMPUS cost sharing rules for family members of active duty members when they accompany the member on a tour of duty outside the United States. A recently initiated demonstration program, described in the Federal Register of September 2, 1994 (59 FR 45668), tests such a program for active duty family members in countries served by OCHAMPUS, Europe.

2. Analysis of Major Public Comments

No public comments were received relating to this section of the rule.

3. Provisions of the Final Rule

The Final Rule is consistent with the proposed rule, except that it provides further details of the circumstances under which alternatives to CHAMPUS cost sharing rules may be approved, in the context of management care programs in overseas locations. Programs will include networks of providers who have agreed to accept CHAMPUS assignment for all care. Beneficiary cost sharing for care obtained from network providers will be zero.

V. Administrative Procedures (Section 199.17(v))

1. Provisions of Proposed Rule

This paragraph authorizes establishment of administrative procedures for the TRICARE Program.

2. Analysis of Major Public Comments

One commenter asked whether MTF billing of other primary health insurance would continue under TRICARE.

Response. MTF billing of third party insurance, governed by provisions of 32 CFR Part 220, will continue under TRICARE.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

III. Provisions of the Rule Concerning the Uniform HMO Benefit Option

A. In General (Section 199.18(a))

1. Provisions of Proposed Rule

This paragraph introduces the Uniform HMO Benefit option. The statutory provision that establishes the parameters for determination of the Uniform HMO Benefit option is section 731 of the National Defense Authorization Act for Fiscal Year 1994. It requires the establishment of a Uniform HMO Benefit option, which shall ''to the maximum extent practicable'' be included ''in all future managed health care initiatives undertaken by'' DoD. This option is to provide ''reduced out-of-pocket costs and a benefit structure that is as uniform as possible throughout the United States.'' The statute further requires a determination that, in the managed care initiative that includes the Uniform HMO Benefit, DoD costs ''are no greater than the costs that would otherwise be incurred to provide health care to the covered beneficiaries who enroll in the option.''

In addition to this provision of the National Defense Authorization Act for Fiscal Year 1994, a similar requirement

is established by section 8025 of the DoD Appropriations Act, 1994. As part of an initiative ''to implement a nationwide managed health care program for the MHSS,'' DoD shall establish ''a uniform, stabilized benefit structure characterized by a triple option health benefit feature.'' Our Uniform HMO Benefit also implements this requirement of law.

In fiscal year 1993, DoD implemented the expansion of the CHAMPUS Reform Initiative to the areas of Carswell and Bergstrom Air Force Bases in Texas and England Air Force Base, Louisiana. (These sites were singled out because they were military bases identified for closure in the Base Realignment and Closure, or ''BRAC'' process; thus the benefit developed for them is called the ''BRAC Benefit.'') This expansion of the CHAMPUS Reform Initiative offers positive incentives for enrollment and preserves the basic design of the original CHAMPUS Reform Initiative program, although it is not identical to that program. The original CHAMPUS Reform Initiative design featured a $5 per visit fee for most office visits, a very much reduced schedule of other copayments, and no deductible or enrollment fee. Although its generosity made it very popular with beneficiaries, it also caused substantial concerns regarding government budget impact. This benefit fails to meet the statutory requirement for cost neutrality to DoD.

The Carswell/Bergstrom/England HMO benefit (BRAC Benefit) model attempts partially to address these concerns, while providing enhanced benefits. It features enrollment fees for some categories of beneficiaries, $5, $10, or $15 per visit fees, depending on beneficiary category, and inpatient per diems of $125 for retirees, their family members and survivors. This benefit also fails to meet the statutory requirement for cost neutrality to DoD.

A new HMO benefit is being presented in this rule as the Uniform HMO Benefit. The principal features of the benefit are displayed in Table 3 following the preamble. Its most significant change from the BRAC Benefit is that inpatient cost sharing for retirees, their family members and survivors is reduced to the levels faced by active duty family members, with concomitant increases in enrollment fees for these beneficiaries. A second important change is that there would be no enrollment fee for family members of active duty members. Finally, fees are set so that if the predicted costs remain valid, they may be held constant for a five-year period, rather than escalating each year with price inflation.

The development of this Uniform HMO Benefit included painstaking analysis of utilization, cost, and administrative effect of potential cost sharing schedules. This analysis included a series of assumptions regarding most likely ramifications of various components of the benefit and the operation of the TRICARE Program. Based on this exhaustive analysis, the formulation of the Uniform HMO Benefit in the rule is the most generous benefit DoD can offer consistent with the statutory cost-neutrality mandate.

2. Analysis of Major Public Comments

No public comments were received relating to this section of the rule.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

B. Benefits Covered Under the Uniform HMO Benefit Option (Section 199.18(b))

1. Provisions of Proposed Rule

For CHAMPUS-eligible beneficiaries, the HMO Benefit option incorporates the existing CHAMPUS benefit package, with potential additions of preventive services and a case management program to approve coverage of usually noncovered health care services (such as home health services) in special situations.

2. Analysis of Major Public Comments

One commenter suggested that the extent of case management benefits and the circumstances under which they would be provided should be clarified.

Response. Case management of services for CHAMPUS beneficiaries will be addressed in a separate, forthcoming rule making action. We anticipate publication of a proposed rule on this subject later in 1995.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

C. Deductibles, Fees, and Cost Sharing Under the Uniform HMO Benefit Option (Sections 199.18 (c) through (f))

1. Provisions of Proposed Rule

Instead of usual CHAMPUS cost sharing requirements, Uniform HMO Benefit option participants will pay special per-service, specific dollar amounts or special reduced cost sharing percentages, which would vary by category or beneficiary.

The Uniform HMO Benefit also would include an annual enrollment fee, which would be in lieu of the CHAMPUS deductible. The current CHAMPUS deductible is $50 per person or $100 per family for family members of active duty members in pay grades E–1 through E–4; and $150 per person or $300 per family for all other beneficiaries. The enrollment fee under the Uniform HMO Benefit option would vary by beneficiary category: $0 for active duty family members, and $230 individual or $460 family for retirees, their family members, and survivors.

The amount of enrollment fees, outpatient charges and inpatient copayment under the Uniform HMO benefit are presented in detail in sections 199.18 (c) through (f).

2. Analysis of Major Public Comments

Two commenters suggested that high enrollment fees might deter CHAMPUS-eligible retirees, survivors, and their family members from enrolling. One demanded that separate and higher copayments for mental health services be eliminated.

Another commenter indicated that the cost share proposed for durable medical equipment and prostheses, coupled with the catastrophic cap of $7,500 for retirees, survivors and their family members, presented a risk of costs too high, and suggested lowering the catastrophic cap to $2,500.

Another commenter objected to the provision allowing for annual updates in enrollment fees and copayments, since the Uniform HMO Benefit cost sharing was calculated to be constant over a five year period.

One commenter objected to application of enrollment fees to retirees, their survivors, and family members, and not to active duty families and suggested that this represents an inappropriate subsidy.

One commenter noted the requirement that the Uniform HMO Benefit be modeled on private sector HMO plans, and pointed out that the average office visit copayment was $6.23 for in civilian HMOs in 1993, compared to $12 for most beneficiaries under the Uniform HMO Benefit. It was suggested that DoD thus ignored a basic requirement of the statute.

Response. Regarding the suggestion that high enrollment fees might deter CHAMPUS-eligible retirees, survivors, and their family members from enrolling, we recognize that each family has different health care needs and circumstances, and all will not find enrollment in TRICARE Prime as the right choice. However, it does offer a cost-effective alternative to TRICARE Standard, and will be the best option for many people.

Regarding the demand that separate and higher copayment for mental health services be eliminated, we cannot

comply. Cost sharing, utilization management, and other requirements are different for mental health services in standard CHAMPUS, just as they are in many civilian sector health plans. Given the need to craft a benefit design which is cost-effective for beneficiaries and the Government, we found no alternative but to preserve the distinct treatment of mental health services.

Regarding comments about potentially high costs for durable medical equipment and prostheses, we agree, and have lowered the catastrophic cap to $3,000 for retirees, their family members and survivors enrolled in TRICARE Prime.

Regarding objections to the provision allowing for annual updates in enrollment fees and copayments, since the uniform HMO Benefit cost sharing was calculated to be constant over a five-year period, we acknowledge this concern, and are committed to maintaining a stable benefit. We have retained the provision allowing updates, however, because of the statutory direction to administer the Uniform HMO Benefit so the DoD costs are no higher than they would be without the program. If the program is not budget neutral, enrollment fees or other cost sharing will need to be increased, or other actions taken, to assure budget neutrality. We recognize that this is a sensitive issue, and we strongly believe that no increases in enrollment fees will be necessary during the first five years of the program, because we performed exhaustive analysis in arriving at the cost sharing structure, and critically reviewed all the assumptions we made about program performance. Considerations leading to retention of the provision permitting updates to fees include, first, that the enrollment fees in the Uniform HMO Benefit are set at the absolute minimum necessary to comply with the budget neutrality dictates; there is no ''cushion'' built in. Second, the Congressional Budget Office, in reviewing the Uniform HMO Benefit, determined that there is so much uncertainty about the performance of managed care systems that precise predictions are impossible. CBO has formally estimated that the Uniform HMO Benefit will increase DoD's costs of health care delivery, despite the statutory requirement that it be budget neutral, and that total cost will probably increase by about 3 percent. Finally, the implementation of TRICARE over the next several years provides an opportunity to confirm the assumptions we made in establishing the Uniform HMO Benefit.

Regarding objections to application of enrollment fees to retirees, their survivors, and family members, and not to active duty families, and suggestions that this represents an inapporpriate subsidy, we would point out that our analysis considered the costs of retirees, their family members and survivors separately from the costs of active duty family members. There is no subsidy of active duty family members by other beneficiaries inherent in the benefit design; instead the differences in cost sharing reflect the differences established statutorily when CHAMPUS was created in 1966, and revised numerous times since then.

Regarding the comment that we ignored the statutory requirement that the Uniform HMO Benefit be modeled on private sector HMO plans, because its cost sharing requirements were higher in some, we disagree. The Uniform HMO Benefit does include somewhat higher copayment than are used in most private sector HMO plans, owing to the other statutory requirements we must address; however, we feel that the Uniform HMO Benefit is ''modeled'' on HMO plans, because it employs the same approach they do, replacing percentage-based cost sharing with fixed dollar copayment to limit beneficiary out-of-pocket expenses and reduce incentives for over-provision of care. The statute imposes several conflicting requirements for the Uniform HMO Benefit, and our design attempts to ''harmonize'' these requirements to the maximum extent feasible. These include the requirement to model the benefit on private sector plans, the requirement that beneficiary out-of-pocket costs be reduced, and that government costs be no greater than would otherwise be incurred for enrollees. Replicating a typical HMO plan offered in the Federal Employee Health Benefits Program, for example, would violate the out-of-pocket cost provisions, because (although per-visit copayments are very low) annual out-of-pocket costs are much higher than in CHAMPUS owing to much higher premiums. Using the very attractive (low) copayments from one of these plans along with low enrollment fees would violate the requirement for budget neutrality. In a nutshell, the Uniform HMO Benefit design reflects a careful balancing of several statutory requirements; considering any one of them in isolation is inappropriate.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule, except for one important change. We have revised the benefit in response to concerns about the vulnerability of a small number of retirees to high out-of-pocket costs, owing to the percentage cost share for durable medical equipment, coupled with a catastrophic cap of $7,500 per family. Instead of incorporating the standard CHAMPUS catastrophic cap of $7,500, the Uniform HMO Benefit will include a catastrophic cap of $3,000 for retirees, survivors, and their family members. Thus retirees, survivors, and their family members who enroll in TRICARE Prime will have a considerably lower limit on their annual out-of-pocket expenses, in addition to the dramatically lower per-service charges features in the Uniform HMO Benefit.

D. Applicability of the Uniform HMO Benefit to the Uniformed Service Treatment Facilities Managed Care Program (Section 199.18(q))

1. Provisions of Proposed Rule

The section would apply the Uniform HMO Benefit provisions to the Uniformed Services Treatment Facility Managed Care Program, beginning in fiscal year 1996. This program includes civilian contractors providing health care services under rules quite different from CHAMPUS, the CHAMPUS Reform Initiative, or other CHAMPUS-related programs.

The National Defense Authorization Act for Fiscal Year 1991, section 718(c), required implementation of a ''managed-care delivery and reimbursement model that will continue to utilize the Uniformed Services Treatment Facilities'' in the MHSS. This provision has been amended and supplemented several times since that Act. Most recently, section 718 of the National Defense Authorization Act for Fiscal Year 1994 authorized the establishment of ''reasonable charges for inpatient and outpatient care provided to all categories of beneficiaries enrolled in the managed care program.'' This is a deviation from previous practice, which had tied Uniformed Services Treatment Facilities (USTF) rules to those of MTFs. This new statutory provision also states that the schedule and application of the reasonable charges shall be in accordance with terms and conditions specified in the USTF Managed Care Plan. The USTF Managed Care Plan agreements call for implementation in the USTF Managed Care Program of cost sharing requirements based on the level and range of cost sharing required in DoD managed care initiatives.

The Conference Report accompanying National Defense Authorization Act for Fiscal Year 1994 calls on DoD ''to develop and implement a plan to introduce competitive managed care

into the areas served by the USTFs to stimulate competition'' among health care provider organizations ''for the cost-effective provision of quality health care services.'' We have determined that it is most appropriate to use the Uniform HMO Benefit for the USTF Managed -Care Program. This action will stimulate competition between the USTFs and firms operating the other DoD managed care program to which the Uniform HMO Benefit applies. Based on these considerations, we proposed to include the USTF Managed Care Program under the Uniform HMO Benefits, effective October 1, 1995.

2. Analysis of Major Public Comments

One commenter asked if Medicare-eligible beneficiaries currently enrolled in the USTF managed care program will continue to be enrolled after October 1, 1995.

One commenter suggested that tying the USTF program to TRICARE was inappropriate, arbitrary, and should be done only after direct notice to those beneficiaries who would be affected. Another commenter indicated that it was inappropriate to increase cost sharing for USTFs while exempting PRIMUS and NAVCARE clinics.

One commenter suggested that the use of the rulemaking process for establishing cost sharing in Uniformed Services Treatment Facilities (USTFs) commits DoD to using the rulemaking process for addressing USTF cost sharing in the future.

One commenter took issue with the applicability of Section 731 of the National Defense Authorization Act for Fiscal Year 1994 to USTFs, since it applies to ''health care initiatives undertaken * * * after the date of enactment of the act,'' and services were initiated under the USTF managed care program prior to that time. Also, the commenter questioned whether Congressional Conference report language recommending the introduction of competitive managed care into areas now served by USTFs justifies imposing the TRICARE costs shares (i.e., the Uniform HMO Benefits) on USTFs.

One commenter suggested that the statute directing the Uniform HMO Benefit provides latitude for differences in cost sharing requirements, because it specifies only reduced out of pocket costs for enrollees, and mandates uniformity in the range of health care services to be available to enrollee. Focusing on the requirement for reduced out-of-pocket costs, the commenter notes that out-of-pocket costs for USTF enrollees would be increased substantially under the Uniform HMO Benefit. Because applying the Uniform HMO Benefit cost sharing to USTFs would be inappropriate and unnecessary, and because the range of health care services in CHAMPUS and the USTF program are similar, the commenter suggests that proposed § 199.18(g) not be included in the final rule.

One commenter suggested that the separate, capitated arrangements between the Government and USTFs meet the requirement that the costs incurred by the Secretary under each managed care initiative be no greater than would otherwise be incurred. It is argued that, because USTFs are fully at risk for excess health care costs, the Uniform HMO Benefit cost sharing is unnecessary for the USTF program.

3. Provisions of the Final Rule

We have deleted as unnecessary this provision of the final rule. The USTF managed care plan agreements provide for adoption of the DoD policy for cost sharing under managed care programs. Thus, incorporation of the Uniform HMO Benefit, which now has been promulgated as DoD policy for managed care programs, into the USTF managed care plan has already been provided for through contractual agreement and need not be repeated in this regulation.

DoD's policy is to phase the uniform HMO benefit into the USTF program, coincident with implementation of the TRICARE regional managed care contract in the respective area. This will assure equitable treatment for beneficiaries within a region and nationality. Eventually, USTFs would be fully integrated into the TRICARE system, on an equal footing with other contract providers of health care. The intention is to provide a level playing field for the operation of managed care programs, and to assure equity among beneficiaries.

IV. Provisions of the Rule Concerning Other Regulatory Changes

The rule makes a number of additional changes to support implementation of TRICARE.

A. Nonavailability Statements (Revisions to Sections 199.4(a)(9) and 199.15)

1. Provisions of Proposed Rule

Proposed revisions to section 199.4 relate to the issuance of NASs by designated military clinics. Beneficiaries residing near such designated clinics would have to obtain a nonavailability statement for the selected outpatient services subject to NAS requirements under section 199.4(a)(9)(i)(C).

In a notice of proposed rule making published on May 11, 1993, we proposed a new provision to allow consideration of availability of care in civilian preferred provider networks in connection with issuance of non-availiability statements; in conjunction with this, a considerable expansion of the list of outpatient services for which an NAS is required was proposed. That proposal was not finalized. In the proposed rule, we outlined a more limited program, covering only inpatient care. Recently, a demonstration program was established in California and Hawaii, allowing consideration of availability of care in civilian preferred provider networks in connection with issuance of non-availability statements for inpatient services only. The results of the demonstration will be incorporated into a Report to Congress on the expanded use of NASs, as required by section 735 of the National Defense Authorization Act for FY 1995.

Finally, proposed revisions to section 199.4(a)(9) would apply NAS requirements in cases where military providers serving at designated military outpatient clinics also provide inpatient care to beneficiaries at civilian hospitals, under External Partnership or Resource Sharing Agreements.

2. Analysis of Major Public Comments

Several commenters objected to the notion of employing non-availability statements under TRICARE, since beneficiaries are being given the choice of enrolling the TRICARE Prime or exercising their benefit under TRICARE Standard with higher cost shares accompanied by freedom of choice.

One commenter recommended that NAS requirements be uniform throughout the nation, to avoid confusing the highly mobile beneficiary population.

Several commenters suggested that requiring non-enrolled beneficiaries to use network providers or civilian facilities with an external partnership or resource sharing agreement, through issuance of a ''restricted'' NAS, was unfair to those unable to enroll in TRICARE Prime, and to those with chronic conditions who might have long-standing provider relationships.

One commenter sought clarification of the applicability of the restricted NAS provisions to beneficiaries under TRICARE Prime, Extra, and Standard and suggested that restricting use of non-network care by TRICARE Standard beneficiaries is an unreasonable curb on their freedom of choice, as well arbitrarily preventing an authorized CHAMPUS provider from furnishing

care to qualifying CHAMPUS beneficiaries. One commenter suggested that limiting freedom of choice of civilian provider for TRICARE Standard beneficiaries through the ''restricted NAS'' provisions of 199.4(a)(9) would be unlawful.

One commenter objected to the use of the provisions for external partnership or resource sharing for mental health care, suggesting that it would be inappropriate mental health services because military mental health providers would provide limited interventions, disrupting care for mental health patients, particularly children and adolescents. Also, the commenter suggested that use of this provision would deny beneficiaries their right to seek care from any qualified CHAMPUS-authorized providers in the catchment area.

One commenter suggested that we define the terms for exceptions to the restricted NAS provision related to ''exceptional hardship'' or ''other special reason,'' recommending that special reason include that more effective or appropriate care is available, and that hardships include financial and geographic hardships.

Response. We acknowledge that there is a legitimate point of view that TRICARE Standard, as the fee-for-service type option, should provide total freedom of choice of provider. However, the requirement that beneficiaries determine whether nearby MTFs can provide a needed service, before obtaining it from a civilian source, is important to the vitality of military medicine and the maintenance of medical readiness training for wartime.

Regarding the recommendation that NAS requirements be uniform throughout the nation, to avoid confusing the highly mobile beneficiary population, we agree, in the main. The only exceptions to nationally standard NAS requirements are those imposed in the context of the specialized treatment services program, wherein catchment areas of up to 200 miles surrounding a service site may be established for highly specialized, high cost services.

Regarding the comments that requiring non-enrolled beneficiaries to use network providers or civilian facilities with an external partnership or resource sharing agreement, through issuance of a ''restricted'' NAS, would be unfair to some beneficiaries, we point out that these NAS requirements in the proposed rule related to inpatient care and a limited, specific list of outpatient procedures. The requirements would not limit beneficiary freedom to choose a provider for most care, particularly care for chronic conditions.

Regarding the request for clarification of the applicability of the restricted NAS provisions, the proposed rule would have applied these to all CHAMPUS-eligible beneficiaries. Regarding the comment that restricting use of non-network care by TRICARE Standard beneficiaries would represent an unreasonable curb on their freedom of choice, we point out, as above, that these provisions apply to a very limited subset of care, and would not impede choice of provider in most cases. Regarding the comment that the restricted NAS would arbitrarily prevent an authorized CHAMPUS provider from furnishing care to qualifying CHAMPUS beneficiaries, this is true in a sense, for the very limited array of services covered. However, many rules and requirements are applicable to the provision and reimbursement of health care services under CHAMPUS, and we believe this limited extension of NAS requirements, specifically authorized by law, would not be arbitrary. Regarding the suggestion that limiting freedom of choice of civilian provider for TRICARE Standard beneficiaries (199.17(a)(6)(ii)(C)) through the ''restricted NAS'' provisions of 199.4(a)(9) would be unlawful, we would point out that the application of NAS requirements to services available in civilian provider networks is authorized under 10 U.S.C. section 1080(b).

Regarding objections to the use of provisions for external partnership or resource sharing for mental health care, again, we point out that the only services to which these proposed requirements would have applied are those subject to normal NAS requirements: inpatient admissions and a limited set of outpatient technical procedures. They would not disrupt ongoing relationships with civilian providers.

Regarding the suggestion that we define the terms for exceptions to the restricted NAS provision related to ''exceptional hardship'' or ''other special reason,'' we agree with the commenters that the availability of more effective or appropriate care would constitute a valid reason for a determination that denying the NAS would be medically inappropriate. Also, we agree that the concept of hardship should include financial and geographic hardships.

3. Provisions of the Final Rule

Provisions regarding the ''restricted NAS'' have been deleted from the final rule. Our current plan is to evaluate the results of the California/Hawaii demonstration project, consider the desirability of expanding the activity more broadly, and report to Congress on our conclusions. Should we decide to go forward with some use of the restricted NAS authority, we would initiate a new rulemakng proceeding.

The expanded authority pertaining to outpatient NASs for a limited set of procedures at a limited number of highly capable outpatient clinics is included in the final rule, consistent with the proposed rule.

B. Participating Provider Program (Revisions to 199.14)

1. Provisions of Proposed Rule

Revisions to section 199.14 change the Participating Provider Program from a mandatory, nationwide program to a localized, optional program. The initial intent of the program was to increase the availability of participating providers by providing a mechanism for providers to sign up as Participating Providers; a payment differential for Participating Providers was to be added as an inducement. With the advent of the TRICARE Program and its extensive network of providers, the nationwide implementation of the Participating Provider Program would be redundant. Accordingly, this rule would eliminate the nationwide program. Where the need arises, CHAMPUS contractors will act to foster participation, including establishment of a local Participating Provider Program when needed, but not including the payment differential feature.

2. Analysis of Major Public Comments

No public comments were received relating to this section of the rule.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

C. Administrative Linkages of Medical Necessity Determinations and Nonavailability Statement Issuance (Revisions to 199.4(a)(9)(vii) and 199.15)

1. Provisions of Proposed Rule

Revisions to section 199.4(a)(9) would provide the basis for administrative linkages between a determination of medical necessity and the decision to issue or deny an Nonavailability Statement (NAS). NAS's are issued when an MTF lacks the capacity or capability to provide a service, but carry no imprimatur of medical necessity. Proposed revisions to section 199.15 establish ground rules for CHAMPUS PRO review of care in MTFs, and would allow for consolidated determinations of medical necessity applicable to both the

MTF and civilian contexts when the CHAMPUS PRO performs the review.

2. Public Comments

One commenter suggested that the provisions for integration of CHAMPUS Peer Review Organization and military utilization review activities are unclear. Also, the commenter indicated that the provisions allowing separate determinations of medical necessity by the MTF and CHAMPUS, with the military decision not binding on CHAMPUS would place the provider and beneficiary at risk.

Response. We disagree that separate decisions of medical necessity place beneficiaries and providers at risk in this context. We believe just the opposite is true. The rule simply provides that if an MTF reserves authority to make its own determinations on medical necessity, which it might do for reasons relating to management and operation of that particular facility, those determinations are not binding on CHAMPUS. The CHAMPUS system has a well-established decision-making structure, complete with numerous procedural requirements and appeal mechanisms. The preservation of the functioning of this structure protects the interests of beneficiaries and providers.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

V. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any ''economically significant regulatory action,'' defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

This is not an economically significant regulatory action under the provisions of Executive Order 12866; however, OMB has reviewed this rule as significant under other provisions of the Executive Order. One commenter on the proposed rule questioned this assessment, since the imposition of enrollment fees on many retirees would have an economically significant impact. We point out that, while the cost sharing structure of TRICARE Prime is changed significantly from standard CHAMPUS cost sharing, the overall effects on beneficiary out-of-pocket costs are relatively minor. For retirees, their family members and survivors, TRICARE Prime enrollment fees in essence replace the deductibles and high inpatient care cost sharing under standard CHAMPUS. The mix of cost sharing requirements in TRICARE Prime is expected to produce aggregate annual out-of-pocket cost reductions for these beneficiaries of about $100 per person, compared to what would be expected absent the program.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. The Department of Defense has certified that this regulatory action would not have a significant impact on a substantial number of small entities.

This rule will impose additional information collection requirements on the public, associated with beneficiary enrollment, under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511). Information collection requirements have been forwarded to OMB for review. The collection instrument serves as an application form for enrollment in TRICARE Prime. The information is needed to indicate beneficiary agreement to abide by the rules of the program and to obtain necessary information to process the beneficiary's request to enroll in TRICARE Prime. The third party administrator chosen to manage the enrollment program, which will be the managed care support contractor in each region, will make enrollment applications available to those who wish to enroll in Prime. The following information is included in the information requirements that have been forwarded to OMB for review:

Number of Respondents: 300,000.

Responses Per Respondent: 1.

Annual Responses: 300,000.

Average Burden Per Response: 15 Minutes.

Annual Burden Hours: 75,000.

Other information collected includes necessary data to determine beneficiary eligibility, other health insurance liability, premium payment, and to identify selection of health care provider.

TABLE 1.—CONSOLIDATED SCHEDULE OF BENEFICIARY CHARGES

	TRICARE prime	TRICARE standard	Medicare eligible beneficiaries
Services from TRICARE Network Providers.	Uniform HMO Benefit cost sharing applies (see Table 3), except unauthorized care covered by point-of-service rules.	TRICARE Extra cost sharing applies (see Table 2).	Cost sharing for Medicare participating providers applies.
Services from non-network providers.	TRICARE Prime point-of-service rules apply: deductible of $300 per person or $600 per family; cost share of 50 percent.	Standard CHAMPUS cost sharing applies.	Standard Medicare cost sharing applies.
Internal resource sharing agreements.	Same as military facility cost sharing.	Same as military facility cost sharing.	Where applicable, same as military facility cost sharing.
External resource sharing agreements.	For professional charges, same as military facility cost sharing; for facility charges, same as Uniform HMO Benefit cost sharing.	For professional charges, same as military facility cost sharing; for facility charges, same as TRICARE Extra cost sharing.	Where applicable, for professional charges, same as military facility cost sharing; for facility charges, same as standard Medicare cost sharing.
PRIMUS and NAVCARE Clinics ...	Same as military facilities	Same as military facilities	Same as military facilities.

TABLE 1.—CONSOLIDATED SCHEDULE OF BENEFICIARY CHARGES—Continued

	TRICARE prime	TRICARE standard	Medicare eligible beneficiaries
Prescription drugs from civilian pharmacies.	As specified in Uniform HMO Benefit (see Table 3); for mail service pharmacy, $4 per prescription for active duty dependents; $8 per prescription for retirees, their dependents and survivors.	For retail pharmacy network, TRICARE Extra Cost sharing applies; for mail service pharmacy, $4 per prescription for active duty dependents; $8 per prescription for retirees, their dependents and survivors; for other civilian pharmacies, standard CHAMPUS cost sharing applies.	In facility closure cases: from retail pharmacy network, 20 percent cost share; from mail service pharmacy, $8 per prescription; no deductible.
Outpatient services in military facilities.	No charge	Same as TRICARE Prime	Same as TRICARE Prime.
Inpatient services in military facilities.	Applicable daily subsistence charges.	Same as TRICARE Prime	Same as TRICARE Prime.

TABLE 2.—TRICARE TRIPLE OPTION PROGRAM

	TRICARE standard	TRICARE extra	TRICARE prime
Enrollment fee	None	None	ACT DUTY DEPS—None others—$230; individual, $460 family.
Outpatient deductible	$300 Family ($100 E4 & below)	Same as standard CHAMPUS	None.
Outpatient services cost shares, including mental health, emergency services, etc.	ACT DUTY DEPS—20% copay after deductible; others—25% copay after deductible.	ACT DUTY DEPS—15% copay after deductible; others—20% copay after deductible.	See Table 3—Schedule of Uniform HMO Benefit Copayments.
Inpatient cost shares, including maternity and skilled nursing facilities, not including mental health.	ACT DUTY DEPS—$25 Per admission or current per diem, whichever is greater; others—Lesser of applicable per diem ($323 in FY 1995) or 25% of institutional billed charges, plus 25% of professional charges.	ACT DUTY DEPS—Same as Standard CHAMPUS; others—lesser of $250 per day or 25% of institutional billed charges, plus 20% of professional charges.	See Table 3—Schedule of Uniform HMO Benefit Copayments.
Ambulatory Surgery	ACT DUTY DEPS—$25 per episode; others—25% of allowable charges.	ACT DUTY DEPS—$25 copay; others—20% copay after deductible.	See Table 3—Schedule of Uniform HMO Benefit Copayments.
Prescription drug benefits	ACT DUTY DEPS—20% cost share after deductible others—25% cost share after deductible. For mail service pharmacy, $4 per prescription for active duty dependents; $8 per prescription for retirees, their dependents and survivors.	ACT DUTY DEPS—15% cost share; no deductible; others—20% cost share; no deductible. For mail service pharmacy, $4 per prescription for active duty dependents; $8 per prescription for retirees, their dependents and survivors.	ACT DUTY DEPS—$5 per prescription; others—$9 per prescription. For mail service pharmacy, $4 per prescription for active duty dependents; $8 per prescription for retirees, their dependents and survivors.
Hospitalization for mental illness and substance use.	ACT DUTY DEPS—$25 per admission or $20 per diem whichever is greater; others—lesser of applicable per diem ($132 in FY 1995) or 25% of institutional charges, plus 25% of professional charges.	ACT DUTY DEPS—Same as TRICARE Standard; others—20% of institutional and professional charges.	ACT DUTY DEPS—Same as TRICARE Standard; others—$40 per diem.

Note: This chart is for illustrative purposes only. It does not include all details of benefits and copayments.

TABLE 3.—UNIFORM HMO BENEFIT FEE AND COPAYMENT SCHEDULE

	ADDs E4 and below	ADDs E5 and above	Retirees, deps, and survivors
Annual Enrollment Fee	$0/$0	$0/$0	$230/$460.
Outpatient Visits, Including Separate Radiology or Lab Services, Family Health, and Home Health Visits.	$6	$12	$12.
Emergency Room Visits	$10	$30	$30.
Mental Health Visits, Individual	$10	$20	$25.
Mental Health Visits, Group	$6	$12	$17.
Ambulatory Surgery	$25	$25	$25.
Prescriptions	$5	$5	$9.
Ambulance Services	$10	$15	$20.
DME, Prostheses, Supplies	10 percent	15 percent	20 percent.
Inpatient Per Diem, General	$11, minimum $25 per admission.	$11, minimum $25 per admission.	$11, minimum $25 per admission.

TABLE 3.—UNIFORM HMO BENEFIT FEE AND COPAYMENT SCHEDULE—Continued

	ADDs E4 and below	ADDs E5 and above	Retirees, deps, and survivors
Inpatient Per Diem, MH/Substance Use	$20, minimum $25 per admission.	$20, minimum $25 per admission.	$40.
Catastrophic Cap on Out-of-Pocket Costs related to Allowable Charges.	$1,000	$1,000	$3,000.

List of Subjects in 32 CFR Part 199

Claims, handicapped, health insurance, and military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.1 is amended by adding a new paragraph (r) to read as follows:

§ 199.1 General provisions.

* * * * *

(r) *TRICARE program*. Many rules and procedures established in sections of this part are subject to revision in areas where the TRICARE program is implemented. The TRICARE program is the means by which managed care activities designed to improve the delivery and financing of health care services in the Military Health Services System(MHSS) are carried out. Rules and procedures for the TRICARE program are set forth in § 199.17.

3. Section 199.2(b) is amended by adding the following definitions and placing them in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

External resource sharing agreement. A type External Partnership Agreement, established in the context of the TRICARE program by agreement of a military medical treatment facility commander and an authorized TRICARE contractor. External Resource Sharing Agreements may incorporate TRICARE features in lieu of standard CHAMPUS features that would apply to standard External Partnership Agreements.

* * * * *

Internal resource sharing agreement. A type of Internal Partnership Agreement, established in the context of the TRICARE program by agreement of a military medical treatment facility commander and authorized TRICARE contractor. Internal Resource Sharing Agreements may incorporate TRICARE features in lieu of standard CHAMPUS features that would apply to standard Internal Partnership Agreements.

* * * * *

NAVCARE clinics. Contractor owned, staffed, and operated primary clinics exclusively serving uniformed services beneficiaries pursuant to contracts awarded by a Military Department.

* * * * *

PRIMUS clinics. Contractor owned, staffed, and operated primary care clinics exclusively serving uniformed services beneficiaries pursuant to contracts awarded by a Military Department.

* * * * *

TRICARE extra plan. The health care option, provided as part of the TRICARE program under § 199.17, under which beneficiaries may choose to receive care in facilities of the uniformed services, or from special civilian network providers (with reduced cost sharing), or from any other CHAMPUS-authorized provider (with standard cost sharing).

TRICARE prime plan. The health care option, provided as part of the TRICARE program under § 199.17, under which beneficiaries enroll to receive all health care from facilities of the uniformed services and civilian network providers (with civilian care subject to substantially reduced cost sharing.

TRICARE program. The program establish under § 199.17.

TRICARE standard plan. The health care option, provided as part of the TRICARE program under § 199.17, under which beneficiaries are eligible for care in facilities of the uniformed services and CHAMPUS under standard rules and procedures.

Uniform HMO benefit. The health care benefit established by § 199.18.

* * * * *

4. Section 199.4 is amended by redesignating paragraph (a)(1) as paragraph (a)(1)(i), by revising paragraph (a)(9)(i)(C), by adding new paragraph (a)(1)(ii), and by adding new paragraph (a)(9)(vi) before the note to read as follows:

§ 199.4 Basic program benefits.

(a) * * *

(1) * * *

(ii) *Impact of TRICARE program*. The basic program benefits set forth in this section are applicable to the basic CHAMPUS program. In areas in which the TRICARE program is implemented, certain provisions of § 199.17 will apply instead of the provisions of this section. In those areas, the provisions of § 199.17 will take precedence over any provisions of this section with which they conflict.

* * * * *

(9) * * *

(i) * * *

(C) An NAS is also required for selected outpatient procedures if such services are not available at a Uniformed Service facility (including selected facilities which are exclusively outpatient clinics) located within a 40-mile radius (catchment area) of the residence of the beneficiary. This does not apply to emergency services or for services for which another insurance plan or program provides the beneficiary primary coverage. Any changes to the selected outpatient procedures will be published by the Assistance Secretary of Defense (Health Affairs) in the Federal Register at least 30 days before the effective date of the change and will be limited to the following categories: Outpatient surgery and other selected outpatient procedures which have high unit costs and for which care may be available in military facilities generally. The selected outpatient procedures will be uniform for all CHAMPUS beneficiaries. A list of the selected outpatient clinics to which this NAS requirement applies will be published periodically in the Federal Register.

* * * * *

(vi) In the case of any service subject to an NAS requirement under paragraph (a)(9) of this section and also subject to a preadmission (or other pre-service) authorization requirement under § 199.4 or § 199.15, the administrative processes for the NAS and pre-service authorization may be combined.

* * * * *

§ 199.14 [Amended]

5. Section 199.14 is amended by removing paragraph (h)(1)(i)(C) and by

redesignating paragraph (h)(1)(i)(D) as paragraph (h)(1)(i)(C).

6. Section 199.15 is amended by adding a new paragraph (n) to read as follows:

§ 199.15 Quality and utilization review peer review organization program.

* * * * *

(n) *Authority to integrate CHAMPUS PRO and military medical treatment facility utilization review activities.*

(1) In the case of a military medical treatment facility (MTF) that has established utilization review requirements similar to those under the CHAMPUS PRO program, the contractor carrying out this function may, at the request of the MTF, utilize procedures comparable to the CHAMPUS PRO program procedures to render determinations or recommendations with respect to utilization review requirements.

(2) In any case in which such a contractor has comparable responsibility and authority regarding utilization review in both an MTF (or MTFs) and CHAMPUS, determinations as to medical necessity in connection with services from an MTF or CHAMPUS-authorized provider may be consolidated.

(3) In any case in which an MTF reserves authority to separate an MTF determination on medical necessity from a CHAMPUS PRO program determination on medical necessity, the MTF determination is not binding on CHAMPUS.

7. Section 199.17 amd 199.18 are added to read as follows:

§ 199.17 TRICARE program.

(a) *Establishment.* The TRICARE program is established for the purpose of implementing a comprehensive managed health care program for the delivery and financing of health care services in the MHSS.

(1) *Purpose.* The TRICARE program implements management improvements primarily through managed care support contracts that include special arrangements with civilian sector health care providers and better coordination between military medical treatment facilities (MTFs) and these civilian providers. Implementation of these management improvements includes adoption of special rules and procedures not ordinarily followed under CHAMPUS or MTF requirements. This section establishes those special rules and procedures.

(2) *Statutory authority.* Many of the provisions of this section are authorized by statutory authorities other than those which authorize the usual operation of the CHAMPUS program, especially 10 U.S.C. 1079 and 1086. The TRICARE program also relies upon other available statutory authorities, including 10 U.S.C. 1099 (health care enrollment system), 10 U.S.C. 1097 (contracts for medical care for retirees, dependents and survivors: alternative delivery of health care), and 10 U.S.C. 1096 (resource sharing agreements).

(3) *Scope of the program.* The TRICARE program is applicable to all of the uniformed services. Its geographical applicability is all 50 states and the District of Columbia, In addition, if authorized by the Assistant Secretary of Defense (Health Affairs), the TRICARE program may be implemented in areas outside the 50 states and the District of Columbia. In such cases, the Assistant Secretary of Defense (Health Affairs) may also authorize modifications to TRICARE program rules and procedures as may be appropriate to the area involved.

(4) *MTF rules and procedures affected.* Much of this section relates to rules and procedures applicable to the delivery and financing of health care services provided by civilian providers outside military treatment facilities. This section provides that certain rules, procedures, rights and obligations set forth elsewhere in this part (and usually applicable to CHAMPUS) are different under the TRICARE program. In addition, some rules, procedures, rights and obligations relating to health care services in military treatment facilities are also different under the TRICARE program. In such cases, provisions of this section take precedence and are binding.

(5) *Implementation based on local action.* The TRICARE program is not automatically implemented in all areas where it is potentially applicable. Therefore, provisions of this section are not automatically implemented, Rather, implementation of the TRICARE program and this section requires an official action by an authorized individual, such as a military medical treatment facility commander, a Surgeon General, the Assistant Secretary of Defense (Health Affairs), or other person authorized by the Assistant Secretary. Public notice of the initiation of the TRICARE program will be achieved through appropriate communication and media methods and by way of an official announcement by the Director, OCHAMPUS, identifying the military medical treatment facility catchment area or other geographical area covered.

(6) *Major features of the TRICARE program.* The major features of the TRICARE program, described in this section, include the following:

(i) *Comprehensive enrollment system.* Under the TRICARE program, all health care beneficiaries become classified into one of five enrollment categories:

(A) Active duty members, all of whom are automatically enrolled in TRICARE Prime;

(B) TRICARE Prime enrollees, who (except for active duty members) must be CHAMPUS eligible;

(C) TRICARE Standard eligible beneficiaries, which covers all CHAMPUS-eligible beneficiaries who do not enroll in TRICARE Prime or another managed care program affiliated with TRICARE;

(D) Medicare-eligible beneficiaries, who, although not eligible for TRICARE Prime, may participate in many features of TRICARE; and

(E) Participants in other managed care program affiliated with TRICARE (when such affiliation arrangements are made).

(ii) *Establishment of a triple option benefit.* A second major feature of TRICARE is the establishment for CHAMPUS-eligible beneficiaries of three options for receiving health care:

(A) Beneficiaries may enroll in the ''TRICARE Prime Plan,'' which features use of military treatment facilities and substantially reduced out-of-pocket costs for CHAMPUS care. Beneficiaries generally agree to use military treatment facilities and designated civilian provider networks, in accordance with enrollment provisions.

(B) Beneficiaries may participate in the ''TRICARE Extra Plan'' under which the preferred provider network may be used on a case-by-case basis, with somewhat reduced out-of-pocket costs. These beneficiaries also continue to be eligible for military medical treatment facility care on a space-available basis.

(C) Beneficiaries may remain in the ''TRICARE Standard Plan,'' which preserves broad freedom of choice of civilian providers (subject to nonavailability statement requirements of § 199.4), but does not offer reduced out-of-pocket costs. These beneficiaries continue to be eligible to receive care in military medical treatment facilities on a space-available basis.

(iii) *Coordination between military and civilian health care delivery systems.* A third major feature of the TRICARE program is a series of activities affecting all beneficiary enrollment categories, designed to coordinate care between military and civilian health care systems. These activities include:

(A) Resource sharing agreements, under which a TRICARE contractor provides to a military medical treatment

facility, personnel and other resources to increase the availability of services in the facility. All beneficiary enrollment categories may benefit from this increase.

(B) Health care finder, an administrative activity that facilitates referrals to appropriate health care services in the military facility and civilian provider network. All beneficiary enrollment categories may use the health care finder.

(C) Integrated quality and utilization management services, potentially standardizing reviews for military and civilian sector providers. All beneficiary categories may benefit from these services.

(D) Special pharmacy programs for areas affected by base realignment and closure actions. This includes special eligibility for Medicare-eligible beneficiaries.

(iv) *Consolidated schedule of charges.* A fourth major feature of TRICARE is a consolidated schedule of charges, incorporating revisions that reduce differences in charges between military and civilian services. In general, the TRICARE program reduces out-of-pocket costs for civilian sector care.

(b) *Triple option benefit in general.* Where the TRICARE program is implemented, CHAMPUS-eligible beneficiaries are given the options of enrolling in the TRICARE Prime Plan (also referred to as ''Prime''); being a participant in TRICARE Extra on a case-by-case basis (also referred to as ''Extra''); or remaining in the TRICARE Standard Plan (also referred to as ''Standard'').

(1) *Choice voluntary.* With the exception of active duty members, the choice of whether to enroll in Prime, to participate in Extra, or to remain in Standard is voluntary for all eligible beneficiaries. This applies to active duty dependents and eligible retired members, dependents of retired members, and survivors. For dependents who are minors, the choice will be exercised by a parent or guardian.

(2) *Active duty members.* For active duty members located in areas where the TRICARE program is implemented, enrollment in Prime is mandatory.

(c) *Eligibility for enrollment in Prime.* Where the TRICARE program is implemented, all CHAMPUS- eligible beneficiaries are eligible to enroll. However, some rules and procedures are different for dependents of active duty members than they are for retirees, their dependents and survivors. In addition, where the TRICARE program is implemented, a military medical treatment facility commander or other authorized individual may establish priorities, consistent with paragraph (c) of this section, based on availability or other operational requirements, for when and whether to offer the enrollment opportunity.

(1) *Active duty members.* Active duty members are required to enroll in Prime when it is offered. Active duty members shall have first priority for enrollment in Prime. Because active duty members are not CHAMPUS eligible, when active duty members obtain care from civilian providers outside the military medical treatment facility, the supplemental care program and its requirements (including § 199.16) will apply.

(2) *Dependents of active duty members.* (i) Dependents of active duty members are eligible to enroll in Prime. After all active duty members, dependents of active duty members will have second priority for enrollment.

(ii) If all dependents of active duty members within the area concerned cannot be accepted for enrollment in Prime at the same time, the MTF Commander (or other authorized individual) may establish priorities within this beneficiary group category. The priorities may be based on first-come, first-served, or alternatively, be based on rank of sponsor, beginning with the lowest pay grade.

(3) *Retired member, dependents of retired members, and survivors.* (i) All CHAMPUS-eligible retired members, dependents of retired members, and survivors are eligible to enroll in Prime. After all active duty members are enrolled and availability of enrollment is assured for all active duty dependents wishing to enroll, this category of beneficiaries will have third priority for enrollment.

(ii) If all CHAMPUS-eligible retired members, dependents of retired members, and survivors within the area concerned cannot be accepted for enrollment in Prime at the same time, the MTF Commander (or other authorized individual) may allow enrollment within this beneficiary group category on a first come, first served basis.

(4) *Participation in extra and standard.* All CHAMPUS-eligible beneficiaries who do not enroll in Prime may participate in Extra on a case-by-case basis or remain in Standard.

(d) *Health benefits under Prime.* Health benefits under Prime, set forth in paragraph (d) of this section, differ from those under Extra and Standard, set forth in paragraphs (e) and (f) of this section.

(1) *Military treatment facility (MTF) care.* All participants in Prime are eligible to receive care in military treatment facilities. Active duty dependents who are participants in Prime will be given priority for such care over active duty dependents who declined the opportunity to enroll in Prime. The latter group, however, retains priority over retirees, their dependents and survivors. There is no priority for MTF care among retirees, their dependents and survivors based on enrollment status.

(2) *Non-MTF care for active duty members.* Under Prime, non-MTF care needed by active duty members continues to be arranged under the supplemental care program and subject to the rules and procedures of that program, including those set forth in § 199.16.

(3) *Benefits covered for CHAMPUS eligible beneficiaries for civilian sector care.* The provisions of § 199.18 regarding the Uniform HMO Benefit apply to TRICARE Prime enrollees.

(e) *Health benefits under the TRICARE extra plan.* Beneficiaries not enrolled in Prime, although not in general required to use the Prime civilian preferred provider network, are eligible to use the network on a case-by-case basis under Extra. The health benefits under Extra are identical to those under Standard, set forth in paragraph (f) of this section, except that the CHAMPUS cost sharing percentages are lower than usual CHAMPUS cost sharing. The lower requirements are set forth in the consolidated schedule of charges in paragraph (m) of this section.

(f) *Health benefits under the TRICARE standard plan.* Where the TRICARE program is implemented, health benefits under Prime, set forth under paragraph (d) of this section, and Extra, set forth under paragraph (e) of this section, are different than health benefits under Standard, set forth in this paragraph (f).

(1) *Military treatment facility (MTF) care.* All nonenrollees (including beneficiaries not eligible to enroll) continue to be eligible to receive care in military treatment facilities on a space available basis.

(a) *Freedom of choice of civilian provider.* Except as stated in § 199.4(a) in connection with nonavailability statement requirements, CHAMPUS-eligible participants in Standard maintain their freedom of choice of civilian provider under CHAMPUS. All nonavailability statement requirements of § 199.4(a) apply to Standard participants.

(3) *CHAMPUS benefits apply.* The benefits, rules and procedures of the CHAMPUS basis program as set forth in this part, shall apply to CHAMPUS-eligible participants in Standard.

(4) *Preferred provider network option for standard participants.* Standard participants, although not generally required to use the TRICARE program preferred provider network are eligible to use the network on a case-by-case basis, under Extra.

(g) *Coordination with other health care programs.* [Reserved.]

(h) *Resource sharing agreements.* Under the TRICARE program, any military medical treatment facility (MTF) commander may establish resource sharing agreements with the applicable managed care support contractor for the purpose of providing for the sharing of resources between the two parties. Internal resource sharing and external resource sharing agreements are authorized. The provisions of this paragraph (h) shall apply to resource sharing agreements under the TRICARE program.

(1) In connection with internal resource sharing agreements, beneficiary cost sharing requirements shall be the same as those applicable to health care services provided in facilities of the uniformed services.

(2) Under internal resource sharing agreements, the double coverage requirements of § 199.8 shall be replaced by the Third Party Collection procedures of 32 CFR part 220, to the extent permissible under such Part. In such a case, payments made to a resource sharing agreement provider through the TRICARE managed care support contractor shall be deemed to be payments by the MTF concerned.

(3) Under internal or external resource sharing agreements, the commander of the MTF concerned may authorize the provision of services, pursuant to the agreement, to Medicare-eligible beneficiaries, if such services are not reimbursable by Medicare, and if the commander determines that this will promote the most cost-effective provision of services under the TRICARE program.

(i) *Health care finder.* The Health Care Finder is an administrative activity that assists beneficiaries in being referred to appropriate health care providers, especially the MTF and preferred providers. Health Care Finder services are available to all beneficiaries. In the case of TRICARE Prime enrollees, the Health Care Finder will facilitate referrals in accordance with Prime rules and procedures. For Standard participants, the Finder will provide assistance for use of Extra. For Medicare-eligible beneficiaries, the Finder will facilitate referrals to TRICARE network providers, generally required to be Medicare participating providers. For participants in other managed care programs, the Finder will assist in referrals pursuant to the arrangements made with the other managed care program. For all beneficiary enrollment categories, the finder will assist in obtaining access to available services in the medical treatment facility.

(j) *General quality assurance, utilization review, and preauthorization requirements under TRICARE program.* All quality assurance, utilization review, and preauthorization requirements for the basic CHAMPUS program, as set forth in this part 199 (see especially applicable provisions of §§ 199.4 and 199.15), are applicable to Prime, Extra and Standard under the TRICARE program. Under all three options, some methods and procedures for implementing and enforcing these requirements may differ from the methods and procedures followed under the basic CHAMPUS program in areas in which the TRICARE program has not been implemented. Pursuant to an agreement between a military medical treatment facility and TRICARE managed care support contractor, quality assurance, utilization review, and preauthorization requirements and procedures applicable to health care services outside the military medical treatment facility may be made applicable, in whole or in part, to health care services inside the military medical treatment facility.

(k) *Pharmacy services, including special services in base realignment and closure sites.*

(1) *In general.* TRICARE includes two special programs under which covered beneficiaries, including Medicare-eligible beneficiaries, who live in areas adversely affected by base realignment and closure actions are given a pharmacy benefit for prescription drugs provided outside military treatment facilities. The two special programs are the retail pharmacy network program and the mail service pharmacy program.

(2) *Retail pharmacy network program.* To the maximum extent practicable, a retail pharmacy network program will be included in the TRICARE program wherever implemented. Except for the special rules applicable to Medicare-eligible beneficiaries in areas adversely affected by military medical treatment facility closures, the retail pharmacy network program will function in accordance with TRICARE rules and procedures otherwise applicable. In addition, a retail pharmacy network program may, on a temporary, transitional basis, be established in a base realignment or closure site independent of other features of the TRICARE program. Such a program may be established through arrangements with one or more pharmacies in the area and may continue until a managed care program is established to serve the affected beneficiaries.

(3) *Mail service pharmacy program.* A mail service pharmacy program will be established to the extent required by law as part of the TRICARE program. The special rules applicable to Medicare-eligible beneficiaries established in this paragraph (k) shall be applicable.

(4) *Medicare-eligible beneficiaries in areas adversely affected by military medical treatment facility closures.* Under the retail pharmacy network program and mail service pharmacy program, there is a special eligibility rule pertaining to Medicare-eligible beneficiaries in areas adversely affected by military medical treatment facility closures.

(i) *Medicare-eligible beneficiaries.* The special eligibility rule pertains to military system beneficiaries who are not eligible for CHAMPUS solely because of their eligibility for part A of Medicare.

(ii) *Area adversely affected by closure.* To be eligible for use of the retail pharmacy network program or mail service pharmacy program based on residency, a Medicare-eligible beneficiary must maintain a principal place of residency in the catchment area of the MTF that closed. In addition, there must be a retail pharmacy network or mail service pharmacy established in that area. In identifying areas adversely affected by a closure, the provisions of this paragraph (k)(4)(ii) shall apply.

(A) In the case of the closure of a military hospital, the area adversely affected is the established 40-mile catchment area of the military hospital that closed.

(B) In the case of the closure of a military clinic (a military medical treatment facility that provided no inpatient care services), the area adversely affected is an area approximately 40 miles in radius from the clinic, established in a manner comparable to the manner in which catchment areas of military hospitals are established. However, this area will not be considered adversely affected by the closure of the clinic if the Director, OCHAMPUS determines that the clinic was not, when it had been in regular operation, providing a substantial amount of pharmacy services to retirees, their dependents, and survivors.

(iii) *Other Medicare-eligible beneficiaries adversely affected.* In addition to beneficiaries identified in paragraph (k)(4)(ii) of this section, eligibility for the retail pharmacy network program and mail service

pharmacy program is also established for any Medicare-eligible beneficiary who can demonstrate to the satisfaction of the Director, OCHAMPUS, that he or she relied upon an MTF that closed for his or her pharmaceuticals. Medicare beneficiaries who obtained pharmacy services at the facility that closed within the 12-month period prior to its closure will be deemed to be reliant on the facility. Validation that any such beneficiary obtained such services may be provided through records of the facility or by a written declaration of the beneficiary. Beneficiaries providing such a declaration are required to provide correct information. Intentionally providing false information or otherwise failing to satisfy this obligation is grounds for disqualification for health care services from facilities of the uniformed services and mandatory reimbursement for the cost of any pharmaceuticals provided based on the improper declaration.

(iv) *Effective date of eligibility for Medicare-eligible beneficiaries.* In any case in which, prior to the complete closure of a military medical treatment facility which is in the process of closure, the Director, OCHAMPUS, determines that the area has been adversely affected by severe reductions in access to services, the Director, OCHAMPUS may establish an effective date for eligibility for the retail pharmacy network program or mail service pharmacy program for Medicare-eligible beneficiaries prior to the complete closure of the facility.

(5) *Effect of other health insurance.* The double coverage rules of § 199.8 are applicable to services provided to all beneficiaries under the retail pharmacy network program or mail service pharmacy program. For this purpose, to the extent they provide a prescription drug benefit, Medicare supplemental insurance plans or Medicare HMO plans are double coverage plans and will be the primary payor.

(6) *Procedures.* The Director, OCHAMPUS shall establish procedures for the effective operation of the retail pharmacy network program and mail service pharmacy program. Such procedures may include the use of appropriate drug formularies, restrictions of the quantity of pharmaceuticals to be dispensed, encouragement of the use of generic drugs, implementation of quality assurance and utilization management activities, and other appropriate matters.

(l) *PRIMUS and NAVCARE clinics.*

(1) *Description and authority.* PRIMUS and NAVCARE clinics are contractor owned, staffed, and operated clinics that exclusively serve uniformed services beneficiaries. They are authorized as transitional entities during the phase-in of TRICARE. This authority to operate a PRIMUS or NAVCARE clinic will cease upon implementation of TRICARE in the clinic's location, or on October 1, 1997, whichever is later.

(2) *Eligible beneficiaries.* All TRICARE beneficiary categories are eligible for care in PRIMUS and NAVCARE Clinics. This includes active duty members, Medicare-eligible beneficiaries and other MHSS-eligible persons not eligible for CHAMPUS.

(3) *Services and charges.* For care provided PRIMUS and NAVCARE Clinics, CHAMPUS rules regarding program benefits, deductibles and cost sharing requirements do not apply. Services offered and charges will be based on those applicable to care provided in military medical treatment facilities.

(4) *Priority access.* Access to care in PRIMUS and NAVCARE Clinics shall be based on the same order of priority as is established for military treatment facilities care under paragraph (d)(1) of this section.

(m) *Consolidated schedule of beneficiary charges.* The following consolidated schedule of beneficiary charges is applicable to health care services provided under TRICARE for Prime enrollees, Standard enrollees and Medicare-eligible beneficiaries. (There are no charges to active duty members. Charges for participants in other managed health care programs affiliated with TRICARE will be specified in the applicable affiliation agreements.)

(1) *Cost sharing for services from TRICARE network providers.*

(i) For Prime enrollees, cost sharing is as specified in the Uniform HMO Benefit in § 199.18, except that for care not authorized by the primary care manager or Health Care Finder, rules applicable to the TRICARE point of service option (see paragraph (n)(3) of this section) are applicable. For such unauthorized care, the deductible is $300 per person and $600 per family. The beneficiary cost share is 50 percent of the allowable charges for inpatient and outpatient care, after the deductible.

(ii) For Standard enrollees, TRICARE Extra cost sharing applies. The deductible is the same as standard CHAMPUS. Cost shares are as follows:

(A) For outpatient professional services, cost sharing will be reduced from 20 percent to 15 percent for dependents of active duty members.

(B) For most services for retired members, dependents of retired members, and survivors, cost sharing is reduced from 25 percent to 20 percent.

(C) In fiscal year 1996, the per diem inpatient hospital copayment for retirees, dependents of retirees, and survivors when they use a preferred provider network hospital is $250 per day, or 25 percent of total charges, whichever is less. There is a nominal copayment for active duty dependents, which is the same as under the CHAMPUS program (see § 199.4). The per diem amount may be updated for subsequent years based on changes in the standard CHAMPUS per diem.

(iii) For Medicare-eligible beneficiaries, cost sharing will generally be as applicable to Medicare participating providers.

(2) *Cost sharing for non-network providers.*

(i) For TRICARE Prime enrollees, rules applicable to the TRICARE point of service option (see paragraph (n)(3) of this section) are applicable. The deductible is $300 per person and $600 per family. The beneficiary cost share is 50 percent of the allowable charges, after the deductible.

(ii) For Standard enrollees, cost sharing is as specified for the basic CHAMPUS program.

(iii) For Medicare eligible beneficiaries, cost sharing is as provided under the Medicare program.

(3) *Cost sharing under internal resource sharing agreements.*

(i) For Prime enrollees, cost sharing is as provided in military treatment facilities.

(ii) For Standard enrollees, cost sharing is as provided in military treatment facilities.

(iii) For Medicare eligible beneficiaries, where made applicable by the commander of the *military medical treatment facility* concerned, cost sharing will be as provided in military treatment facilities.

(4) *Cost sharing under external resource sharing.*

(i) For Prime enrollees, cost sharing applicable to services provided by military facility personnel shall be as applicable to services in military treatment facilities; that applicable to institutional and related ancillary charges shall be as applicable to services provided under TRICARE Prime.

(ii) For TRICARE Standard participants, cost sharing applicable to services provided by military facility personnel shall be as applicable to services in military treatment facilities; that applicable to non-military providers, including institutional and related ancillary charges, shall be as applicable to services provided under TRICARE Extra.

(iii) For Medicare-eligible beneficiaries, where available, cost

sharing applicable to services provided by military facility personnel shall be as applicable to services in military treatment facilities; that applicable to non-military providers, including institutional and related ancillary charges shall be as applicable to services provided under Medicare.

(5) *Prescription drugs.*

(i) For Prime enrollees, cost sharing is as specified in the Uniform HMO Benefit, except that the copayment under the mail service pharmacy program is $4.00 for active duty dependents and $8.00 for all other covered beneficiaries, per prescription, for up to a 90 day supply.

(ii) For Standard participants, there is a 15 percent cost share for active-duty dependents and a 20 percent cost share for retirees, their dependents and survivors for prescription drugs provided by retail pharmacy network providers; for prescription drugs obtained from network pharmacies, the CHAMPUS deductible will not apply. The copayment for all beneficiaries under the mail service pharmacy program is $4.00 for active duty dependents and $8.00 for all other covered beneficiaries, per prescription, for up to a 90 day supply. There is no deductible for this program.

(iii) For Medicare-eligible beneficiaries affected by military medical treatment facility closures, there is a 20 percent copayment for prescriptions provided under the retail pharmacy network program, and an $8.00 copayment per prescription, for up to a 90-day supply, for prescriptions provided by the mail service pharmacy program. There is no deductible under either program.

(6) *Cost share for outpatient services in military treatment facilities.*

(i) For dependents of active duty members in all enrollment categories, there is no charge for outpatient visits provided in military medical treatment facilities.

(ii) For retirees, their dependents, and survivors in all enrollment categories, there is no charge for outpatient visits provided in military medical treatment facilities.

(n) *Additional health care management requirements under TRICARE prime.* Prime has additional, special health care management requirements not applicable under Extra, Standard or the CHAMPUS basic program. Such requirements must be approved by the Assistant Secretary of Defense (Health Affairs). In TRICARE, all care may be subject to review for medical necessity and appropriateness of level of care, regardless of whether the care is provided in a military medical treatment facility or in a civilian setting. Adverse determinations regarding care in military facilities will be appealable in accordance with established military medical department procedures, and adverse determinations regarding civilian care will be appealable in accordance with § 199.15.

(1) *Primary care manager.* All active duty members and Prime enrollees will be assigned or be allowed to select a primary care manager pursuant to a system established by the MTF Commander or other authorized official. The primary care manager may be an individual physician, a group practice, a clinic, a treatment site, or other designation. The primary care manager may be part of the MTF or the Prime civilian provider network. The enrollees will be given the opportunity to register a preference for primary care manager from a list of choices provided by the MTF Commander. Preference requests will be honored, subject to availability, under the MTF beneficiary category priority system and other operational requirements established by the commander (or other authorized person).

(2) *Restrictions on the use of providers.* The requirements of this paragraph (n)(2) shall be applicable to health care utilization under TRICARE Prime, except in cases of emergency care and under the point-of-service option (see paragraph (n)(3) of this section).

(i) Prime enrollees must obtain all primary health care from the primary care manager or from another provider to which the enrollee is referred by the primary care manager or an authorized Health Care Finder.

(ii) For any necessary specialty care and all inpatient care, the primary care manager or the Health Care Finder will assist in making an appropriate referral. All such nonemergency specialty care and inpatient care must be preauthorized by the primary care manager or the Health Care Finder.

(iii) The following procedures will apply to health care referrals and preauthorizations in catchment areas under TRICARE Prime:

(A) The first priority for referral for specialty care or inpatient care will be to the local MTF (or to any other MTF in which catchment area the enrollee resides).

(B) If the local MTF(s) are unavailable for the services needed, but there is another MTF at which the needed services can be provided, the enrollee may be required to obtain the services at that MTF. However, this requirement will only apply to the extent that the enrollee was informed at the time of (or prior to) enrollment that mandatory referrals might be made to the MTF involved for the service involved.

(C) If the needed services are available within civilian preferred provider network serving the area, the enrollee may be required to obtain the services from a provider within the network. Subject to availability, the enrollee will have the freedom to choose a provider from among those in the network.

(D) If the needed services are not available within the civilian preferred provider network serving the area, the enrollee may be required to obtain the services from a designated civilian provider outside the area. However, this requirement will only apply to the extent that the enrollee was informed at the time of (or prior to) enrollment that mandatory referrals might be made to the provider involved for the service involved (with the provider and service either identified specifically or in connection with some appropriate classification).

(E) In cases in which the needed health care services cannot be provided pursuant to the procedures identified in paragraphs (n)(2)(iii) (A) through (D) of this section, the enrollee will receive authorization to obtain services from a CHAMPUS-authorized civilian provider(s) of the enrollee's choice not affiliated with the civilian preferred provider network.

(iv) When Prime is operating in noncatchment areas, the requirements in paragraphs (n)(2)(iii) (B) through (E) of this section shall apply.

(v) Any health care services obtained by a Prime enrollee, but not obtained in accordance with the utilization management rules and procedures of Prime will not be paid for under Prime rules, but may be covered by the point-of-service option (see paragraph (n)(3) of this section). However, Prime rules may cover such services if the enrollee did not know and could not reasonably have been expected to know that the services were not obtained in accordance with the utilization management rules and procedures of Prime.

(3) *Point-of-service option.* TRICARE Prime enrollees retain the freedom to obtain services from civilian providers on a point-of-service basis. In such cases, all requirements applicable to standard CHAMPUS shall apply, except that there shall be higher deductible and cost sharing requirements (as set forth in paragraphs (m)(1)(i) and (m)(2)(i) of this section).

(o) *TRICARE program enrollment procedures.* There are certain requirements pertaining to procedures for enrollment in Prime. (These procedures do not apply to active duty

members, whose enrollment is mandatory.)

(1) *Open Enrollment.* Beneficiaries will be offered the opportunity to enroll in Prime on a continuing basis.

(2) *Enrollment period.* The Prime enrollment period shall be 12 months. Enrollees must remain in Prime for a 12 month period, at which time they may disenroll. This requirement is subject to exceptions for change of residence and other changes announced at the time the TRICARE program is implemented in a particular area.

(3) *Quarterly installment payments of enrollment fee.* The enrollment fee required by § 199.18(c) may be paid in quarterly installments, each equal to one-fourth of the total amount, plus an additional maintenance fee of $5.00 per installment. For any beneficiary paying his or her enrollment fee in quarterly installments, failure to make a required installment payment on a timely basis (including a grace period, as determined by the Director, OCHAMPUS) will result in termination of the beneficiary's enrollment in Prime and disqualification from future enrollment in Prime for a period of one year.

(4) *Period revision.* Periodically, certain features, rules or procedures of Prime, Extra and/or Standard may be revised. If such revisions will have a significant effect on participants' costs or access to care, beneficiaries will be given the opportunity to change their enrollment status coincident with the revisions.

(5) *Effects of failure to enroll.* Beneficiaries offered the opportunity to enroll in Prime, who do not enroll, will remain in Standard and will be eligible to participate in Extra on a case-by-case basis.

(p) *Civilian preferred provider networks.* A major feature of the TRICARE program is the civilian preferred provider network.

(1) *Status of network providers.* Providers in the preferred provider network are not employees or agents of the Department of Defense or the United States Government. Rather, they are independent contractors of the government (or other independent entities having business arrangements with the government). Although network providers must follow numerous rules and procedures of the TRICARE program, on matters of professional judgment and professional practice, the network provider is independent and not operating under the direction and control of the Department of Defense. Each preferred provider must have adequate professional liability insurance, as required by the Federal Acquisition Regulation, and must agree to indemnify the United States Government for any liability that may be assessed against the United States Government that is attributable to any action or omission of the provider.

(2) *Utilization management policies.* Preferred providers are required to follow the utilization management policies and procedures of the TRICARE program. These policies and procedures are part of discretionary judgments by the Department of Defense regarding the methods of delivering and financing health care services that will best achieve health and economic policy objectives.

(3) *Quality assurance requirements.* A number of quality assurance requirements and procedures are applicable to preferred network providers. These are for the purpose of assuring that the health care services paid for with government funds meet the standards called for in the contract or provider agreement.

(4) *Provider qualifications.* All preferred providers must meet the following qualifications:

(i) They must be CHAMPUS authorized providers and CHAMPUS participating providers.

(ii) All physicians in the preferred provider network must have staff privileges in a hospital accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO). This requirement may be waived in any case in which a physician's practice does not include the need for admitting privileges in such a hospital, or in locations where no JCAHO accredited facility exists. However, in any case in which the requirement is waived, the physician must comply with alternative qualification standards as are established by the MTF Commander (or other authorized official).

(iii) All preferred providers must agree to follow all quality assurance, utilization management, and patient referral procedures established pursuant to this section, to make available to designated DoD utilization management or quality monitoring contractors medical records and other pertinent records, and to authorize the release of information to MTF Commanders regarding such quality assurance and utilization management activities.

(iv) All preferred network providers must be Medicare participating providers, unless this requirement is waived based on extraordinary circumstances. This requirement that a provider be a Medicare participating provider does not apply to providers not eligible to be participating providers under Medicare.

(v) The provider must be available to Extra participants.

(vi) The provider must agree to accept the same payment rates negotiated for Prime enrollees for any person whose care is reimbursable by the Department of Defense, including, for example, Extra participants, supplemental care cases, and beneficiaries from outside the area.

(vii) All preferred providers must meet all other qualification requirements, and agree to comply with all other rules and procedures established for the preferred provider network.

(5) *Access standards.* Preferred provider networks will have attributes of size, composition, mix of providers and geographical distribution so that the networks, coupled with the MTF capabilities, can adequately address the health care needs of the enrollees. Before offering enrollment in Prime to a beneficiary group, the MTF Commander (or other authorized person) will assure that the capabilities of the MTF plus preferred provider network will meet the following access standards with respect to the needs of the expected number of enrollees from the beneficiary group being offered enrollment:

(i) Under normal circumstances, enrollee travel time may not exceed 30 minutes from home to primary care delivery site unless a longer time is necessary because of the absence of providers (including providers not part of the network) in the area.

(ii) The wait time for an appointment for a well-patient visit or a specialty care referral shall not exceed four weeks; for a routine visit, the wait time for an appointment shall not exceed one week; and for an urgent care visit the wait time for an appointment shall generally not exceed 24 hours.

(iii) Emergency services shall be available and accessible to handle emergencies (and urgent care visits if not available from other primary care providers pursuant to paragraph (p)(5)(ii) of this section), within the service area 24 hours a day, seven days a week.

(iv) The network shall include a sufficient number and mix of board certified specialists to meet reasonably the anticipated needs of enrollees. Travel time for specialty care shall not exceed one hour under normal circumstances, unless a longer time is necessary because of the absence of providers (including providers not part of the network) in the area. This requirement does not apply under the Specialized Treatment Services Program.

(v) Office waiting times in nonemergency circumstances shall not exceed 30 minutes, except when emergency care is being provided to patients, and the normal schedule is disrupted.

(6) *Special reimbursement methods for network providers.* The Director, OCHAMPUS, may establish, for preferred provider networks, reimbursement rates and methods different from those established pursuant to § 199.14. Such provisions may be expressed in terms of percentage discounts off CHAMPUS allowable amounts, or in other terms. In circumstances in which payments are based on hospital-specific rates (or other rates specific to particular institutional providers), special reimbursement methods may permit payments based on discounts off national or regional prevailing payment levels, even if higher than particular institution-specific payment rates.

(7) *Methods for establishing preferred provider networks.* There are several methods under which the MTF Commander (or other authorized official) may establish a preferred provider network. These include the following:

(i) There may be an acquisition under the Federal Acquisition Regulation, either conducted locally for that catchment area, in a larger area in concert with other MTF Commanders, regionally as part of a CHAMPUS acquisition, or on some other basis.

(ii) To the extent allowed by law, there may be a modification by the Director, OCHAMPUS, of an existing CHAMPUS fiscal intermediary contract to add TRICARE program functions to the existing responsibilities of the fiscal intermediary contractor.

(iii) The MTF Commander (or other authorized official) may follow the ''any qualified provider'' method set forth in paragraph (q) of this section.

(iv) Any other method authorized by law may be used.

(q) *Preferred provider network establishment under any qualified provider method.* The any qualified provider method may be used to establish a civilian preferred provider network. Under this method, any CHAMPUS-authorized provider within the geographical area involved that meets the qualification standards established by the MTF Commander (or other authorized official) may become a part of the preferred provider network. Such standards must be publicly announced and uniformly applied. Also under this method, any provider who meets all applicable qualification standards may not be excluded from the preferred provider network. Qualifications include:

(1) The provider must meet all applicable requirements in paragraph (p)(4) of this section.

(2) The provider must agree to follow all quality assurance and utilization management procedures established pursuant to this section.

(3) The provider must be a Participating Provider under CHAMPUS for all claims.

(4) The provider must meet all other qualification requirements, and agree to all other rules and procedures, that are established, publicly announced, and uniformly applied by the commander (or other authorized official).

(5) The provider must sign a preferred provider network agreement covering all applicable requirements. Such agreements will be for a duration of one year, are renewable, and may be canceled by the provider or the MTF Commander (or other authorized official) upon appropriate notice to the other party. The Director, OCHAMPUS shall establish an agreement model or other guidelines to promote uniformity in the agreements.

(r) *General fraud, abuse, and conflict of interest requirements under TRICARE program.* All fraud, abuse, and conflict of interest requirements for the basic CHAMPUS program, as set forth in this part 199 (see especially applicable provisions of § 199.9) are applicable to the TRICARE program. Some methods and procedures for implementing and enforcing these requirements may differ from the methods and procedures followed under the basic CHAMPUS program in areas in which the TRICARE program has not been implemented.

(s) *Partial implementation.* The Assistant Secretary of Defense (Health Affairs) may authorize the partial implementation of the TRICARE program. The following are examples of partial implementation:

(1) The TRICARE Extra Plan and the TRICARE Standard Plan may be offered without the TRICARE Prime Plan.

(2) In remote sites, where complete implementation of TRICARE is impracticable, TRICARE Prime may be offered to a limited group of beneficiaries. In such cases, normal requirements of TRICARE Prime which the Assistant Secretary of Defense (Health Affairs) determines are impracticable may be waived.

(3) The TRICARE program may be limited to particular services, such as mental health services.

(t) *Inclusion of Department of Veterans Affairs Medical Centers in TRICARE networks.* TRICARE preferred provider networks may include Department of Veterans Affairs health facilities pursuant to arrangements, made with the approval of the Assistant Secretary of Defense (Health Affairs), between those centers and the Director, OCHAMPUS, or designated TRICARE contractor.

(u) *Care provided outside the United States to dependents of active duty members.* The Assistant Secretary of Defense (Health Affairs) may, in conjunction with implementation of the TRICARE program, authorize a special CHAMPUS program for dependents of active duty members who accompany the members in their assignments in foreign countries. Under this special program, a preferred provider network will be established through contracts or agreements with selected health care providers. Under the network, CHAMPUS covered services will be provided to the covered dependents with all CHAMPUS requirements for deductibles and copayments waived. The use of this authority by the Assistant Secretary of Defense (Health Affairs) for any particular geographical area will be announced in the Federal Register. The announcement will include a description of the preferred provider network program and other pertinent information.

(v) *Administrative procedures.* The Assistant Secretary of Defense (Health Affairs), the Director, OCHAMPUS, and MTF Commanders (or other authorized officials) are authorized to establish administrative requirements and procedures, consistent with this section, this part, and other applicable DoD Directives or Instructions, for the implementation and operation of the TRICARE program.

§ 199.18 Uniform HMO Benefit.

(a) *In general.*

There is established a Uniform HMO Benefit. The purpose of the Uniform HMO benefit is to establish a health benefit option modeled on health maintenance organization plans. This benefit is intended to be uniform wherever offered throughout the United States and to be included in all managed care programs under the MHSS. Most care purchased from civilian health care providers (outside an MTF) will be under the rules of the Uniform HMO Benefit or the Basic CHAMPUS Program (see § 199.4). The Uniform HMO Benefit shall apply only as specified in this section or other sections of this part, and shall be subject to any special applications indicated in such other sections.

(b) *Services covered under the uniform HMO benefit option.*

(1) Except as specifically provided or authorized by this section, all CHAMPUS benefits provided, and benefit limitations established, pursuant to this part, shall apply to the Uniform HMO Benefit.

(2) Certain preventive care services not normally provided as part of basic program benefits under CHAMPUS are covered benefits when provided to Prime enrollees by providers in the civilian provider network. Standards for preventive care services shall be developed based on guidelines from the U.S. Department of Health and Human Services. Such standards shall establish a specific schedule, including frequency or age specifications for:

(i) Laboratory and x-ray tests, including blood lead, rubella, cholesterol, fecal occult blood testing, and mammography;

(ii) Pap smears;

(iii) Eye exams;

(iv) Immunizations;

(v) Periodic health promotion and disease prevention exams;

(vi) Blood pressure screening;

(vii) Hearing exams;

(viii) Sigmoidoscopy or colonoscopy;

(ix) Serologic screening; and

(x) Appropriate education and counseling services. The exact services offered shall be established under uniform standards established by the Assistant Secretary of Defense (Health Affairs).

(3) In addition to preventive care services provided pursuant to paragraph (b)(2) of this section, other benefit enhancements may be added and other benefit restrictions may be waived or relaxed in connection with health care services provided to include the Uniform HMO Benefit. Any such other enhancements or changes must be approved by the Assistant Secretary of Defense (Health Affairs) based on uniform standards.

(c) *Enrollment fee under the uniform HMO benefit.*

(1) The CHAMPUS annual deductible amount (see § 199.4(f)) is waived under the Uniform HMO Benefit during the period of enrollment. In lieu of a deductible amount, an annual enrollment fee is applicable. The specific enrollment fee requirements shall be published annually by the Assistant Secretary of Defense (Health Affairs), and shall be uniform within the following groups: dependents of active duty members in pay grades of E–4 and below; active duty dependents of sponsors in pay grades E–5 and above; and retirees and their dependents.

(2) *Amount of enrollment fees.* Beginning in fiscal year 1996, the annual enrollment fees are:

(i) for dependents of active duty members in pay grades of E–4 and below, $0;

(ii) for active duty dependents of sponsors in pay grades E–5 and above, $0; and

(iii) for retirees and their dependents, $230 individual, $460 family.

(d) *Outpatient cost sharing requirements under the uniform HMO benefit.*

(1) *In general.* In lieu of usual CHAMPUS cost sharing requirements (see § 199.4(f)), special reduced cost sharing percentages or per service specific dollar amounts are required. The specific requirements shall be uniform and shall be published annually by the Assistant Secretary of Defense (Health Affairs).

(2) *Structure of outpatient cost sharing.* The special cost sharing requirements for outpatient services include the following specific structural provisions:

(i) For most physician office visits and other routine services, there is a per visit fee for each of the following groups: dependents of active duty members in pay grade E–1 through E–4; dependents of active duty members in pay grades of E–5 and above; and retirees and their dependents. This fee applies to primary care and specialty care visits, except as provided elsewhere in this paragraph (d)(2) of this section. It also applies to ancillary services (unless provided as part of an office visit for which a copayment is collected), family health services, home health care visits, eye examinations, and immunizations.

(ii) There is a copayment for outpatient mental health visits. It is a per visit fee for dependents of active duty members in pay grades E–1 through E–4; for dependents of active duty members in pay grades of E–5 and above; and for retirees and their dependents for individual visits. For group visits, there is a lower per visit fee for dependents of active duty members in pay grades E–1 through E–4; for dependents of active duty members in pay grades of E–5 and above; and for retirees and their dependents.

(iii) There is a cost share of durable medical equipment, prosthetic devices, and other authorized supplies for dependents of active duty members in pay grades E–1 through E–4; for dependents of active duty members in pay grades of E–5 and above; and for retirees and their dependents.

(iv) For emergency room services, there is a per visit fee for dependents of active duty members in pay grades E–1 through E–4; for dependents of active duty members in pay grades of E–5 and above; and for retirees and their dependents.

(v) For ambulatory surgery services, there is a per service fee for dependents of active duty members in pay grades E–1 through E–4; for dependents of active duty members in pay grades of E–5 and above; and for retirees and their dependents.

(vi) There is a copayment for prescription drugs per prescription, including medical supplies necessary for administration, for dependents of active duty members in pay grades E–1 through E–4; for dependents of active duty members in pay grades of E–5 and above; and for retirees and their dependents.

(vii) There is a copayment for ambulance services for dependents of active duty members in pay grades E–1 through E–4; for dependents of active duty members in pay grades of E–5 and above; and for retirees and their dependents.

(3) *Amount of outpatient cost sharing requirements.* Beginning in fiscal year 1996, the outpatient cost sharing requirements are as follows:

(i) For most physician office visits and other routine services, as described in paragraph (d)(2)(i) of this section, the per visit fee is as follows:

(A) For dependents of active duty members in pay grades E–1 through E–4, $6;

(B) For dependents of active duty members in pay grades of E–5 and above, $12; and

(C) For retirees and their dependents, $12.

(ii) For outpatient mental health visits, the per visit fee is as follows:

(A) For individual outpatient mental health visits:

(*1*) For dependents of active duty members in pay grades E–1 through E–4, $10;

(*2*) For dependents of active duty members in pay grades of E–5 and above, $20; and

(*3*) For retirees and their dependents, $25.

(B) For group outpatient mental health visits, there is a lower per visit fee, as follows:

(*1*) For dependents of active duty members in pay grades E–1 through E–4, $6;

(*2*) For dependents of active duty members in pay grades of E–5 and above, $12; and

(*3*) For retirees and their dependents, $17.

(iii) The cost share for durable medical equipment, prosthetic devices, and other authorized supplies is as follows:

(A) For dependents of active duty members in pay grades E–1 through E–4, 10 percent of the negotiated fee;

(B) For dependents of active duty members in pay grades of E–5 and above, 15 percent of the negotiated fee; and

(C) For retirees and their dependents, 20 percent of the negotiated fee.

(iv) For emergency room services, the per visit fee is as follows:

(A) For dependents of active duty members in pay grades E–1 through E–4, $10;

(B) For dependents of active duty members in pay grades of E–5 and above, $30; and

(C) For retirees and their dependents, $30.

(v) For primary surgeon services in ambulatory surgery, the per service fee is as follows:

(A) For dependents of active duty members in pay grades E–1 through E–4, $25;

(B) For dependents of active duty members in pay grades of E–5 and above, $25; and

(C) For retirees and their dependents, $25.

(vi) The copayment for each 30-day supply (or smaller quantity) of a prescription drug is as follows:

(A) For dependents of active duty members in pay grades E–1 through E–4, $5;

(B) For dependents of active duty members in pay grades of E–5 and above, $5; and

(C) For retirees and their dependents, $9.

(vii) The copayment for ambulance services is as follows:

(A) For dependents of active duty members in pay grades E–1 through E–4, $10;

(B) For dependents of active duty members in pay grades of E–5 and above, $15; and

(C) For retirees and their dependents, $20.

(e) *Inpatient cost sharing requirements under the uniform HMO benefit.*

(1) *In general.* In lieu of usual CHAMPUS cost sharing requirements (see § 199.4(f)), special cost sharing amounts are required. The specific requirements shall be uniform and shall be published as a notice annually by the Assistant Secretary of Defense (Health Affairs).

(2) *Structure of cost sharing.* For services other than mental illness or substance use treatment, there is a nominal copayment for active duty dependents and for retired members, dependents of retired members, and survivors. For inpatient mental health and substance use treatment, a separate per day charge is established.

(3) *Amount of inpatient cost sharing requirements.*

Beginning in fiscal year 1996, the inpatient cost sharing requirements are as follows:

(i) For acute care admissions and other non-mental health/substance use treatment admissions, the per diem charge is as follows, with a minimum charge of $25 per admission:

(A) For dependents of active duty members in pay grades E–1 through E–4, $11;

(B) For dependents of active duty members in pay grades of E–5 and above, $11; and

(C) For retirees and their dependents, $11.

(ii) For mental health/substance use treatment admissions, and for partial hospitalization services, the per diem charge is as follows, with a minimum charge of $25 per admission:

(A) For dependents of active duty members in pay grades E–1 through E–4, $20;

(B) For dependents of active duty members in pay grades of E–5 and above, $20; and

(C) For retirees and their dependents, $40.

(f) *Limit on out-of-pocket costs for retired members, dependents of retired members, and survivors under the uniform HMO benefit.* Total out-of-pocket costs per family of retired members, dependents of retired members and survivors under the Uniform HMO Benefit may not exceed $3,000 during the one-year enrollment period. For this purpose, out-of-pocket costs means all payments required of beneficiaries under paragraphs (c), (d), and (e) of this section. In any case in which a family reaches this limit, all remaining payments that would have been required of the beneficiary under paragraphs (c), (d), and (e) of this section will be made by the program in which the Uniform HMO Benefit is in effect.

(g) *Updates.* The enrollment fees for fiscal year 1996 set under paragraph (c) of this section and the per service specific dollar amounts for fiscal year 1996 set under paragraphs (d) and (e) of this section may be updated for subsequent years to the extent necessary to maintain compliance with statutory requirements pertaining to government costs. This updating does not apply to cost sharing that is expressed as a percentage of allowable charges; these percentages will remain unchanged. The Secretary shall ensure that the TRICARE program complies with statutory cost neutrality requirements.

Dated: September 28, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–24576 Filed 10–4–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD 05–95–066]

Anchorage Grounds; Delaware River, Marcus Hook Range Channel, Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6). Safety Zone; Delaware River, Marcus Hook Range Channel

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around dredging operations in the Marcus Hook Range channel adjacent to anchorage 7. To facilitate the rerouting of ship traffic through the area, the Coast Guard is suspending a regulation that allows ships to anchor for up to 48 hours in the Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6), and instituting temporary regulations governing these anchorages. The safety zone is needed to protect vessels, the port community and the environment from the hazards associated with dredging operations in the Marcus Hook Range channel and to minimize temporary port congestion during dredging operations. Entry into this zone is prohibited unless authorized by the Captain of the Port, Philadelphia, PA.

EFFECTIVE DATES: This rule is effective from 12:01 p.m., on September 20, 1995 until 6 a.m., on October 31, 1995.

FOR FURTHER INFORMATION CONTACT: LTJG S.J. Kelly, Project Officer c/o U.S. Coast Guard Captain of the Port, 1 Washington Ave., Philadelphia, PA. 19147–4395, Phone: (215) 271–4909.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. The Coast Guard was informed by U.S. Army Corps of Engineers, Philadelphia District on August 30, 1995 that dredging

operations would commence on September 15, 1995. Publishing a NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to protect the environment and mariners against potential hazards associated with the dredging operations in the Marcus Hook Range channel.

Drafting Information

The drafters of this regulation are LTJG S.J. Kelly, project officer for the Captain of the Port, Philadelphia, and LCDR J.C. Good, project attorney, Fifth Coast Guard District.

Discussion of the Regulation

Upon request from the U.S. Army Corps of Engineers, the Coast Guard is establishing a safety zone around dredging operations in the Marcus Hook Range channel. Ship traffic through the Marcus Hook Range channel will be diverted through anchorage 7 to reduce the hazards associated with dredging of the channel. Anchorage restrictions in the Mantua Creek and Deepwater Point Anchorages are being imposed to accommodate those vessels that will be prevented from anchoring in Marcus Hook Anchorage.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The Captain of the Port, Philadelphia will direct anchoring of vessels so as not to significantly impede traffic flow in the vicinity of the dredging operations.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and, it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, the Coast Guard amends 33 CFR 110 and 33 CFR 165 as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.157, paragraph (b)(2), is suspended and a new paragraph (d) is added to read as follows:

§ 110.157 Delaware Bay and River.

* * * * *

(d)(1) Except as otherwise provided in this section, no vessel shall occupy any anchorage for a longer period than 48 hours without a permit from the Captain of the Port. Vessels expecting to be at anchor for more than 48 hours shall obtain a permit from the Captain of the Port for that purpose. No vessel in such condition that it is likely to sink or otherwise become a menace or obstruction to navigation or anchorage of other vessels shall occupy an anchorage except in an emergency, and then only for such period as may be permitted by the Captain of the Port.

(2) Vessels anchoring in anchorage area 7 off Marcus Hook, as described in paragraph (a)(8) of this section, shall obtain permission from the Captain of the Port, Philadelphia, PA, at least 24 hours in advance. Permission to anchor will be granted on a ''first-come, first-served'' basis. Only one vessel, at any time, will be permitted to anchor in the anchorage. Vessels will not be permitted to occupy the anchorage for more than 12 hours.

(3) The following regulations apply to anchorage 6 off Deepwater Point and anchorage 9 near the entrance to Mantua Creek, as described in § 110.157 (a)(7) and (a)(10), respectively, of this part:

(i) Vessels 700 feet or greater in length requesting anchorage shall obtain permission from the Captain of the Port, Philadelphia, PA at least 24 hours in advance.

(ii) Vessels 700–750 feet in length shall have one (1) tug alongside at all times while at anchor.

(iii) Vessels greater than 750 feet in length shall have two (2) tugs alongside at all times while at anchor.

(iv) Tugs required for vessels at anchor must be of sufficient horsepower to assist with necessary maneuvers to remain clear of the navigation channel.

PART 165—[AMENDED]

3. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

4. A new § 165.T05–066 is added to read as follows:

§ 165.T05–066 Safety Zone: Delaware River, Marcus Hook Range Channel.

(a) *Location:* The following area is a moving safety zone: All waters within a 150 yard radius of dredging operations in or near the Marcus Hook Range channel in the vicinity of anchorage 7.

(b) *Effective Dates:* This rule is effective from 12:01 p.m., on September 20, 1994 until 6 a.m., on October 31, 1995, unless terminated sooner by the Captain of the Port, Philadelphia or his designated representative.

(c) *Regulations:* The following regulations shall apply within the safety zone.

(1) Entry into this zone is prohibited unless authorized by the Captain of the Port, Philadelphia, PA.

(2) Vessels transiting the Marcus Hook Range channel shall divert from the main ship channel through Anchorage 7, remain at least 150 yards from the dredging operations, and operate at a minimum safe speed necessary to maintain steerageway and reduce wake.

(3) The operator of any vessel in the safety zone shall proceed as directed by the designated representative of the Captain of the Port, Philadelphia, PA.

(4) The senior boarding officer enforcing the safety zone may be contacted on VHF channels 13 & 16. The Captain of the Port, Philadelphia and the Command Duty Officer at the

Marine Safety Office, Philadelphia, may be contacted at telephone number (215) 271–4940.

(d) *Definitions: The following definitions apply to this section: Designated representative of the Captain of the Port* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Philadelphia, Pennsylvania, to act on his behalf.

Dated: September 20, 1995.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 95–24528 Filed 10–4–95; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64 and 68

[CC Docket No. 92–90; DA 95–2030]

Implementing the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule; request for comments.

SUMMARY: On September 22, 1995, the Common Carrier Bureau of the Federal Communications Commission released a Public Notice seeking comment on MCI's Petition for Clarification and/or Reconsideration of the Commission's Order finalizing its rules implementing the Telephone Consumer Protection Act.

DATES: Interested parties may file comments on or before October 20, 1995, and Reply Comments on or before November 3, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Shefferman (Attorney) (202) 418–2332, Network Services Division, Common Carrier Bureau, Room 6008, Washington, DC 20554.

SUPPLEMENTARY INFORMATION:

Commission seeks comment on MCI Petition for Clarification and/or Reconsideration of Commission Order finalizing rules implementing the Telephone Consumer Protection Act [CC Docket No. 92–90; DA 95–2030].

Released: September 22, 1995.

Comments Due: October 20, 1995.

Replies Due: November 3, 1995.

On September 14, 1995, MCI Telecommunications Corporation (''MCI'') filed a Petition for Clarification and/or Reconsideration regarding Section 68.318 of the Commission's Rules, which requires that all facsimile transmissions identify the entity or individual sending the message and the telephone number of the facsimile machine, entity or individual sending the message. In a Memorandum Opinion and Order (''Order'') adopted on July 26, 1995, 60 FR 42068, August 15, 1995, the Commission stated that facsimile broadcast service providers must comply with these identification requirements. MCI asserts that the Order therefore requires two entities to identify themselves, the facsimile broadcaster and the entity on whose behalf the facsimile is being sent, while the rule only requires the identification of one entity. MCI asks the Commission to clarify or, in the alternative, reconsider its Order with respect to this issue.

We invite comment on MCI's Petition for Clarification and/or Reconsideration. Comments should be filed on or before October 20, 1995, and Reply Comments should be filed on or before November 7, 1995. All comments should be filed with the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, referencing CC Docket No. 92–90. The full text of the Petition is available for inspection and duplication during regular business hours in the FCC Reference Center, Federal Communications Commission, 1919 M Street, N.W., Room 239, Washington, DC 20554. Copies may also be obtained from International Transcription Service by calling (202) 857–3800.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–24532 Filed 10–4–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 95–99; RM–8612]

Radio Broadcasting Services; Buffalo Gap, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of D.J. Broadcasting, Inc., licensee of Station WKDE(FM), Channel 288A, Altavista, Virginia, and Ridle Radio, Inc., licensee of Station WZXI(FM), Channel 288A, Buffalo Gap, Virginia, substitutes Channel 238A for Channel 288A at Buffalo Gap and modifies Station WZXI(FM)'s license accordingly. *See* 60 FR 33388, June 28, 1995. Channel 238A can be allotted to Buffalo Gap in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter site specified in Station WZXI(FM)'s license. The coordinates for Channel 238A at Buffalo Gap are 38–10–55 and 79–13–34. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–99, adopted September 19, 1995, and released September 29, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Channel 288A and adding Channel 238A at Buffalo Gap.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–24825 Filed 10–4–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 93–314; RM–8396]

Radio Broadcasting Services; Cadiz and Oak Grove, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ham Broadcasting, Inc.,

substitutes Channel 293C3 for Channel 292A at Cadiz, Kentucky, and reallots Channel 293C3 from Cadiz to Oak Grove, Kentucky, and modifies Station WKDZ-FM's license accordingly. *See* 59 FR 44, January 3, 1994. Channel 293C3 can be allotted to Oak Grove in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.7 kilometers (6.0 miles) north at petitioner's requested site. The coordinates for Channel 293C3 at Oak Grove are North Latitude 36–45–05 and West Longitude 87–27–02. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–314, adopted September 15, 1995, and released September 29, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 292A from Cadiz, and adding Oak Grove, Channel 293C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–24823 Filed 10–4–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 89–597; RM–7118 and Rm–7321]

Radio Broadcasting Services; Wiggins and D'Iberville, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 250C2 from Wiggins, Mississippi, to D'Iberville, Mississippi, and modifies the license for Station WUSD to specify operation in D'Iberville in response to a proposal filed by White Broadcasting Company, Inc. *See* 56 FR 27693 and 56 FR 27725, June 17, 1991. The coordinates for Channel 250C2 at D'Iberville are 30–27–22 and 88–53–12.

EFFECTIVE DATE: November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order*, MM Docket No. 89–597, adopted September 21, 1995, and released September 29, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Wiggins, Channel 250C2 and adding D'Iberville, Channel 250C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–24822 Filed 10–4–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 76

[MM Docket No. 92–266, FCC 95–397]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Thirteenth Order on Reconsideration in MM Docket 92–266 to simplify rules affecting cable operators' rates and to provide cable operators with an additional option for adjusting their rates. This streamlined methodology encourages operators to limit rate increases to once per year rather than up to 4 times per year under the existing methodology. It will also limit delays in recovering costs that operators have experienced under the current system. This streamlined rate review process benefits all affected parties. An annual rate adjustment option could eliminate subscriber confusion and frustration because subscribers will not have to contend with numerous rate increases during a given year. Annual adjustments also benefit cable operators because filing for rate increases and providing notice to subscribers of such rate increases once per year is more efficient. Regulatory authorities benefit from an annual rate adjustment system because such a system minimizes the number of rate adjustments they have to review each year.

EFFECTIVE DATE: November 6, 1995, except that new reporting requirements shall take effect thirty (30) days after approval of the Office of Management and Budget. At a later date, the Commission will publish a document specifying the effective date.

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson (202) 416–1190.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Thirteenth Order on Reconsideration in MM Docket No. 92–266, FCC 95–397, adopted September 15, 1995 and released September 22, 1995.

The complete text of this Thirteenth Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (''ITS, Inc.'') at (202) 587–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of the Thirteenth Order on Reconsideration

Introduction

The Cable Television Consumer Protection and Competition Act of 1992 (''the 1992 Cable Act'') required the Commission to prescribe rate regulations that protect subscribers from having to pay unreasonable rates by ensuring that basic service tier (''BST'') and cable programming service tier (''CPST'') rate levels do not exceed rates that would be charged in the presence of effective competition. The 1992 Cable Act directed the Commission to ''seek to reduce administrative burdens on subscribers, cable operators, franchising authorities and the Commission'' in meeting this mandate.

Based on information we have secured from operators, we have concluded that we should further streamline the rate review process in ways that will benefit subscribers, cable operators, local franchising authorities, and the Commission. The current process allows, and to some degree encourages, operators to file for multiple rate adjustments during each year. This process can be costly for operators because they must file Form 1210s and provide subscribers with 30 days' advance written notice each time they file for a rate adjustment. In addition, multiple rate adjustments in one year could create subscriber confusion. Multiple rate adjustments also impose administrative burdens on regulatory authorities because they must review each proposed rate adjustment.

We have found that under the current rate framework, some operators are delayed when attempting to recover their costs because they are not permitted to file for recovery of external cost increases and additions of new channels until the quarter after costs are incurred or channel changes are made. Operators may experience further delay while regulatory authorities review the proposed adjustments. Further, operators are never able to recover costs between the date they are incurred and the date a rate adjustment is permitted. Also, under the so-called ''use or lose'' provision of the current rules, operators must file for rate increases that reflect cost increases within one year of the date they first incur those additional costs, or else lose the ability to pass through those costs.

In order to address these concerns, we are adopting on our own motion a new optional rate adjustment methodology where cable operators will be permitted to make only annual rate changes to their BSTS and CPSTs. Operators that elect to use this new methodology will adjust their rates once per year to reflect reasonably certain and reasonably quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the 12 months following the rate change. Because operators will be permitted to estimate cost changes that will occur in the 12 months following the rate filing, we expect that this methodology will limit delays in recovering costs that operators may experience under the current system. Any incurred cost that is not projected may be accrued with interest and added to rates at a later time. If actual and projected costs are different during the rate year, a ''true up'' mechanism is available to correct estimated costs with actual cost changes. The ''true up'' requires operators to decrease their rates or alternatively, permits them to increase their rates to make adjustments for over- or under-estimations of these cost changes. Operators would not lose the right to make a rate increase at a later date if they choose not to implement a rate adjustment at the beginning of the next rate year. Finally, in order that operators not feel compelled to make rate filings or increase rates when they otherwise would not, we will eliminate the ''use or lose'' requirement for operators that elect this methodology.

We believe that operators will benefit from this system because it will alleviate the difficulty of delays for rate adjustments that they now experience and will permit them to utilize annual rate adjustments without the loss of revenues they now incur as a result of the current methodology. Subscriber confusion will be alleviated because rate adjustments will take place once per year. Moreover, subscribers will be protected by this system because if an operator overestimates its permitted rate increase as a result of its projections, the operator would be required to rectify the error with interest when makes its rate adjustment at the beginning of the next rate year. Finally, franchising authorities and the Commission will benefit from this methodology because they will not be required to review more than one rate adjustment per year.

We are also requiring operators that elect the annual rate adjustment methodology to file BST rate adjustment requests 90 days prior to the effective date of the proposed changes. Operators may implement rate changes as proposed in their filings 90 days after they file unless the franchising authority rejects the proposed rate as unreasonable. If the franchising authority has not issued a rate decision and the operator makes a rate adjustment after the 90-day period has expired, the franchising authority may order a prospective rate reduction and refunds at a later time, where appropriate. The franchising authority need not issue an accounting order to preserve its right to issue its rate order after the 90-day review period. However, if an operator inquires as to whether the franchising authority intends to issue a rate order after the 90-day review period, the franchising authority must notify the operator of its intent in this regard within 15 days of the operator's request of lose its ability to order a refund or a prospective rate reduction. If a proposed rate goes into effect before the franchising authority issues its rate order, the franchising authority will have 12 months from the date the operator filed for the rate adjustment to issue its rate order. In the event that the franchising authority does not act within this time, it may not at a later date order a refund or a prospective rate reduction with respect to the rate filing.

An operator that has a CPST complaint pending against it or has been ordered by the Commission to reduce its CPST rates, and that elects the annual rate adjustment option, must propose the annual rate adjustment at least 30 days prior to the effective date of the rate change. The Commission can deny an increase before the end of the 30-day period, but if the Commission does not act within 30 days, the operator may implement the rate increase as proposed on the Form 1240. The increase would go into effect, subject to a prospective rate reduction and refund, where appropriate, which the Commission may order at a later time.

Although operators that elect the annual rate adjustment option generally will not be permitted to make more than one rate adjustment per year, we will permit operators to make rate adjustments for the addition of channels to BSTs that the operator is required by federal or local law to carry, i.e., new must-carry, local origination, public, educational and governmental access and leased access channels. Franchising authorities will have 60 days to review these increases prior to their going into effect. The proposed rate adjustment will go into effect 60 days after filing unless the franchising authority finds that the adjustment would be unreasonable. We also will allow operators to make one additional rate adjustment during the year to reflect channel additions to CPSTs, and to BSTs where the operator offers only one regulated tier. Operators may make this additional rate adjustment reflecting channel additions to CPSTs at any time during the year. Subject to the existing

going forward rules, which affect the amount by which an operator can increase its rates, operators will have no limit on the number of channels they may add when they make this rate adjustment during the year.

Operators that elect the annual rate adjustment system must file for rate adjustments for equipment and installations on Form 1205 on the same date that they file for their other rate adjustments on Form 1240. Therefore, for operators that elect to use the annual rate adjustment methodology, we are changing the current rule which requires operators to file 60 days after the close of their fiscal year. In addition, we will continue to require operators to base their proposed annual customer equipment and installations rate adjustments on past costs because we believe that it would be far more difficult to project reasonably certain and reasonably quantifiable changes in equipment and installation costs. We also will require that when an operator introduces a new type of equipment, the operator must file for a rate adjustment no later than 60 days before the date the operator intends to charge subscribers for the new type of equipment. The proposed rate would go into effect at the end of this 60-day period unless the franchising authority rejects the proposed rate as unreasonable or the franchising authority finds that the operator has submitted an incomplete filing.

Operators that do not elect to use the annual rate adjustment system may continue to use the existing system which allows operators to make rate adjustments up to once per calendar year quarter. With respect to the current quarterly rate adjustment system, this order affirms our decision in the *Fourth Reconsideration Order* 59 FR 53113 (10/21/94) to allow operators to pass through changes in franchise fees and Commission regulatory fees within 30 days of filing for a rate adjustment reflecting these costs unless the franchising authority finds that these rate adjustments are unreasonable before the 30-day period has expired.

This Order will also simplify the rate review process by eliminating our current practice of reviewing the entire CPST rate after receiving a CPST complaint. On the effective date of these rules, this system of rate regulation, commonly referred to as ''all rates in play,'' will be eliminated for CPSTs that have not been subject to a rate complaint. Following that date, CPST rate complaints will require a Commission determination whether the amount of the rate increase complained about is reasonable.

In addition, we clarify that for purposes of adjusting rates to reflect increases in franchise requirement costs, operators are entitled to pass through any increases in costs that are specifically required by franchise agreements, provided that the recovery of costs may not encompass costs the operator would incur in the absence of the franchise requirement. Consistent with this goal, operators are permitted to pass through to subscribers (a) cost increases associated with technical standards and customer service standards that exceed federal requirements; (b) cost increases attributable to satisfying franchise requirements to support public, educational and governmental access; (c) increases in the costs of providing institutional networks, video services, voice transmissions and data services to or from governmental institutions and educational institutions, including private schools; and (d) cost increases associated with a franchise requirement that an operator remove cable from utility poles and place the same cable underground.

Further, the Order affirms the Commission's decision to permit operators to advertise rates for regulated cable services regionally using a single tier rate plus a franchise fee. The order also permits franchising authorities to determine the method by which franchise fee overpayments are returned to cable operators. However, franchising authorities must return overpayments within a reasonable period of time.

Annual Rate Adjustments for Basic Services and Cable Programming Services

We believe that the current price cap adjustment system generally protects subscribers from unreasonable rates. Nevertheless, with the benefit of more than one year of experience with the current system, we have found that there are some disadvantages to the current price cap adjustment mechanism. One of our concerns about the current system is that operators file for multiple rate adjustments each year because they realize cost increases throughout the year and are unable to adjust their rates to recover these costs until after these costs are incurred. We believe that this process can be costly and inefficient because operators must file a Form 1210 and provide subscribers with 30 days' advance written notice each time they file for a rate adjustment. In addition, we are concerned that multiple rate adjustments in one year can cause confusion among subscribers. Furthermore, each rate adjustment imposes an administrative burden on regulatory authorities who must review the adjustment.

We also are concerned about the delays that operators may experience in recovering their costs under the current rate adjustment system. Because operators incur costs before they can file for rate adjustments and they often experience delays in being able to implement rate adjustments after they have filed for them, they never recover costs that are incurred as a result of these delays.

Moreover, the current rate adjustment system provides that if an operator waits more than 12 months to make rate adjustments reflecting increases in external costs and the number of regulated channels, the operator loses the ability to recover for these cost increases. In addition, operators are required to make their annual inflation adjustment during an eleven month period or lose the ability to make that inflation adjustment. Although we adopted these rules to ensure that subscribers do not experience rate shock in cases where an operator delays implementing large numbers of rate increases, we are concerned that the ''use or lose'' mechanisms may result in some cable operators charging higher rates before they would otherwise elect to adjust their rates.

Annual Rate Adjustment System

In order to address these concerns, on our own motion we are adopting a new optional rate adjustment methodology that encourages cable operators to make only annual rate changes to their BSTs and CPSTs. Following the approval of the new Form 1240 by the Office of Management and Budget, operators may choose between the existing quarterly rate adjustment system and a new annual rate adjustment system. Operators that elect to use the new methodology would adjust their rates once a year to reflect changes in external costs, inflation, and the number of regulated channels that they expect to occur during the 12 months following the rate change. Because operators will be permitted to project changes that will occur in the 12 months following the rate filing, we expect that this methodology will limit delays that operators experience under the current system. Any cost that is not projected may be accrued and added to rates, with 11.25% interest, when the operator makes its next filing. Moreover, at the end of the rate year, operators ''true up'' their projected changes to correct for differences between actual and projected costs during the rate year. Operators would not lose the right to

make rate increases at a later date if they choose not to implement a rate change at the beginning of the next rate year. Moreover, if an operator overestimates its permitted rate as a result of its projections, the operator would be required to correct this overestimation, with interest, when it makes its next rate adjustment at the beginning of the next rate year.

We believe that this annual rate adjustment option will benefit subscribers, cable operators, franchising authorities, and the Commission. Annual rate modifications would limit subscriber confusion and frustration, for example, because subscribers would not have to contend with numerous rate adjustments during a given year. An annual adjustment makes good business sense for cable operators because it would allow them to file for a rate increase and provide notice to subscribers of such rate increases once a year. Regulatory authorities benefit from an annual rate adjustment system because it will minimize the number of rate adjustments they have to review each year.

Moreover, the annual filing option addresses concerns raised by some cable operators that under the current system they can experience delays in recovering costs. Under the quarterly system, the operator will begin recovering these costs prospectively once the rate is approved, but will never recover the costs incurred during a period in which adjustments to its rates to reflect cost changes were delayed. However, operators that elect the annual system will face minimal delays in recovering their costs because they are permitted to adjust their rates to reflect reasonably certain and reasonably quantifiable changes that will occur up to 12 months after the rate adjustment will take effect. Moreover, even in cases where there are delays in cost recovery, the operator will be made whole because it will be permitted to recover for the accrual of unrecovered costs plus 11.25% interest between the date costs are incurred and the date the rate adjustment is made.

Subscribers are protected by this system because if an operator overestimates its permitted rate as a result of its projections, the operator would be required to account for this overestimation plus 11.25% interest when it makes its next rate adjustment at the beginning of the next rate year.

On our own motion, we are also eliminating the ''use or lose'' mechanism for inflation, increases in external costs and increases in the number of channels for operators that elect the annual rate adjustment method. As a result, operators will not have to file more frequently than they would otherwise in order to recover costs they have incurred. In addition, subscribers will, in many cases, receive the benefit of having rate increases delayed.

The annual option applies to all rate changes: inflation, changes in external costs, changes in the number of regulated channels, and changes in equipment and installation costs. Under this option, an operator would file an FCC Form 1240 once a year for the purpose of making rate adjustments to reflect changes in external costs, inflation, and the number of regulated channels on a tier. On the same date that it files an FCC Form 1240, the operator also would file an FCC Form 1205 for the purpose of adjusting rates for regulated equipment and installations.

Operators may choose the annual filing date, but they must notify the franchising authority of their proposed date prior to their filing. Franchising authorities or their designees may reject the annual filing date chosen by the operator for good cause. For example, where a City Council must approve the rate adjustments at issue, if the review period the operator chooses coincides with a City Council recess, the franchising authority would be justified in rejecting the operator's chosen filing date. A franchising authority may not reject an operator's filing date, however, for the purpose of delaying an operator's ability to make rate adjustments. If the franchising authority finds good cause to reject the proposed filing date, the franchising authority and the operator should work together in an effort to reach a mutually acceptable date. If no agreement can be reached, the franchising authority may set the filing date up to 60 days later. In addition, operators that elect annual rate adjustments may change their filing dates from year-to-year, but at least twelve months must pass before the operator can implement its next annual adjustment.

Operators must use the annual or quarterly methodology for both BSTs and CPSTs. This requirement makes BST and CPST cost assumptions on an equivalent basis and ensures that subscribers receive the full benefit of the annual rate adjustment methodology, i.e., a minimal number of rate adjustments.

Although we do not expect that operators will want to switch between the annual rate adjustment option and the quarterly option, our new rules will permit switching, provided they meet certain conditions. Whenever an operator switches from the current quarterly system to the annual system, the operator may not file a Form 1240 earlier than 90 days after the operator proposed its last rate adjustment on a Form 1210. This will give regulatory authorities a reasonable period of time to complete their review of an operator's previous rate increase request before it begins reviewing an annual rate adjustment request. Similarly, when an operator changes from the annual system to the quarterly system, the operator may not return to a quarterly adjustment using a Form 1210 until a full quarter after it has filed a true up of its annual rate on a Form 1240 for the preceding period. This will ensure that operators do not file a Form 1210 until after the initial regulatory review period for the true up on the Form 1240 has expired. It will also prevent operators from being able to double recover for changes in their expenses because the rate period under the annual system and the quarterly system will not coincide.

The Commission will review this new annual rate adjustment option prior to December 31, 1998 to determine whether the new option is producing the expected benefits and whether the quarterly system should be eliminated and replaced with the annual rate adjustment system.

Regulatory Review Period for Annual Rate Changes

a. Basic Service Tier

Operators that elect the annual rate adjustment methodology must file BST rate change requests at least 90 days prior to the date they plan to implement the proposed changes. Operators may implement rate changes as they have proposed in their filings 90 days after they file unless the franchising authority rejects the proposed rate as unreasonable. If the franchising authority has not issued a rate decision and the operator makes a rate adjustment after the 90-day period has expired, the franchising authority may order a prospective rate reduction and refunds at a later time, where appropriate. The franchising authority need not issue an accounting order to preserve its right to require a refund after the 90-day review period. However, if at the end of the 90-day review period an operator inquires as to whether the franchising authority is continuing to review the operator's filing, the franchising authority or its designee must respond to the operator within 15 days of receiving the inquiry. Failure to reply in the requisite amount of time will result in the franchising authority losing its ability to issue

refunds or to order prospective rate reductions. In its response, the franchising authority must indicate whether it is continuing to review the operator's filing. If a proposed rate goes into effect before the franchising authority issues its rate order, the franchising authority will have 12 months from the date the operator filed for the rate adjustment to issue its rate order. In the event that the franchising authority does not act within the 12-month period, it may not at a later date order a refund or a prospective rate reduction with respect to the rate filing. We set this time constraint on franchising authorities because we believe that one year should provide ample time for review, and because operators need to have certainty with respect to their liability for refunds and whether their rates will be permitted to remain in effect.

We believe that a 90-day regulatory review period strikes a good balance among the interests of subscribers, franchising authorities and cable operators. If operators were required to file any more than 90 days before a rate adjustment is scheduled to take effect, they would encounter much greater difficulty in projecting their costs accurately. On the other hand, if operators were permitted to file less than 90 days before a rate adjustment is scheduled to take effect, franchising authorities may not have enough time to review a complete rate filing because the franchising authority must simultaneously determine whether an operator has (a) justified projected inflation, changes in external costs, and changes in the number of regulated channels; (b) accurately estimated any undercharges or overcharges in its true up of the previous year; and (c) accurately determined its actual costs for customer equipment and installations in its annual Form 1205 filing. Without ample time to review operators' rate filings, franchising authorities may be unable to ensure that subscribers are paying reasonable rates for BSTs. This 90-day review period will also help operators develop their business plans because it provides them with certainty as to when rate changes will become effective.

If there is a material change in an operator's circumstances during the 90-day review period and the change affects the operator's rate change filing, the operator may file an amendment to its Form 1240. Such an amendment must be filed, however, before the end of the 90-day review period. If the operator files such an amendment to its filing, the franchising authority will have at least 30 days to review the filing. Therefore, if the amendment is filed more than 60 days after the operator made its initial filing, the operator's proposed rate change may not go into effect any earlier than 30 days after the filing of its amendment. However, if the operator files its amended application on or prior to the sixtieth day of the 90-day review period, the operator may implement is proposed rate adjustment, as modified by the amendment, 90 days after its initial filing.

b. Cable Programming Services Tiers

Section 76.960 of the Commission's rules provides that if the Commission has ordered an operator to make a prospective rate reduction for a CPST, the rate reduction will be binding on the operator for one year, unless the Commission specifies otherwise. Accordingly, operators that have been required to reduce their CPST rates have not been permitted to increase their rates under our price cap rules for one year without prior Commission approval.

Treatment of Franchise Fees and Commission Regulatory Fees Under Quarterly Rate Adjustment Option

We affirm our decision to permit operators that file rate adjustments under the quarterly system to pass through franchise fees within 30 days of filing unless the franchising authority finds that the rate adjustment is unreasonable before 30 days has expired. If the franchising authority does not issue a rate decision within this 30 day period, the proposed rate will go into effect, subject to subsequent refund orders. In order to issue a refund order, the franchising authority must issue a written order at the end of the 30 day period directing the operator to keep an accurate account of all amounts received by reason of the proposed rate and on whose behalf such amounts are paid.

We do not believe this rule presents a serious risk of harm to subscribers because, contrary to the assertions of Local Governments, we believe franchising authorities normally should be able to complete their review of rate adjustments reflecting the pass through of franchise fees within 30 days of an operator's filing. In most cases, the franchising authority's review of the franchise fee pass through generally should entail minimal administrative burdens since the franchising authority is intimately familiar with how the fee is assessed. Because the operator pays the franchise fee to the franchising authority, there should not be any dispute over the amount of franchise fees that were actually paid to the franchising authority. Further, the franchise fee is generally easily determined by computing a fixed percentage of the operator's gross annual revenues or some other easily ascertainable amount. We find that franchising authorities can easily determine how the pass through of such fees should be reflected in a BST rate adjustment because the entire cost of franchise fees is directly assigned to the BST. Finally, to the extent franchise fees are miscalculated, we believe that our approach fully protects subscribers' interests in paying reasonable rates because franchise fee increases are subject to refunds.

As with all other rate adjustment filings, if an operator files for a rate adjustment to reflect an increase in franchise fees and fails to complete its rate justification form or to include supporting information called for by the form, the franchising authority may order the cable operator to file supplemental information. While the franchising authority is waiting to receive this information from the cable operator, the deadline for the franchising authority to rule on the reasonableness of the proposed rates is tolled. Once the supplemental information has been filed with the franchising authority, the time for determining the reasonableness of the rate by the franchising authority will recommence. We believe that this requirement is essential if franchising authorities are going to have the minimum information necessary to complete a review of an operator's rate adjustment request within 30 days of the filing.

We affirm our decision to permit operators to pass through Commission annual regulatory fees as external costs. As we stated in the *Fourth Reconsideration Order,* Commission annual regulatory fees should be afforded external cost treatment because they are exceptional, newly imposed, governmentally assessed fees that are easily measurable and beyond the control of operators. We disagree with NATOA's argument that Commission regulatory fees are like CARS fees in that they do not impose a significant financial burden on cable operators. We find that Commission regulatory fees can reach significant levels because they are assessed on a per subscriber basis, as opposed to CARS fees, which are assessed on a flat fee basis of $220 per license and which comprise only a small expense for most cable systems.

In addition, with respect to operators that elect to file rate adjustments under the quarterly system, we affirm our

decision to permit operators to adjust rates on account of changes in Commission regulatory fees within 30 days of filing. We do not believe this rule presents a serious risk of harm to consumers because we believe franchising authorities normally should be able to complete their review of rate adjustments reflecting the pass through of Commission annual regulatory fees within 30 days of an operator's filing. In most cases, the franchising authority's review of the franchise fee pass through should entail minimal administrative burdens because the amount of any rate adjustment reflecting an increase should be easy to determine since it is fixed on a per subscriber basis. To the extent Commission annual regulatory fees are miscalculated, we believe that our approach fully protects subscribers' interests in paying reasonable rates because fee increases are subject to refunds.

We also affirm our decision to require operators to assign the Commission's annual regulatory fee directly to the BST. As we noted in the *Fourth Reconsideration Order,* the fee is intended to reimburse the Commission for its costs of regulating cable service, including oversight of basic cable service and other regulatory activities. We continue to believe that direct assignment to the BST is the most equitable means of permitting cable systems to pass through regulatory fees to subscribers because cable system annual regulatory fees are assessed on a per subscriber basis and all subscribers receive the BST. If we were to allocate these costs among the tiers, some subscribers would pay more than others even though the cost is imposed on the cable operator evenly per subscriber. Moreover, the administrative burdens associated with calculating and assigning fees among the BST and CPSTs weigh against such an assignment.

External Cost Treatment of Franchise Requirements

On reconsideration, we believe that operators should be permitted to include increases in franchise requirement costs that the operator would not have incurred in the absence of the franchise requirement. Such increases include both new requirements that the franchising authority imposes and increases in the cost of complying with existing requirements. Our current rules permit external cost treatment for increases in the cost of satisfying franchise requirements for (a) PEG access channels, (b) public, educational, and governmental access programming, and (c) customer service standards and technical standards that exceed federal requirements. In our view, such increased costs would not have been incurred in the absence of a franchise agreement because we believe that the operator would not have chosen to provide such services.

We believe that operators also should be permitted to pass through increases in the costs of institutional networks and the provision of video services, voice transmissions and data transmissions to or from governmental institutions and educational institutions, including private schools, to the extent such services are required by the franchise agreement. We believe that such costs should be afforded external cost treatment because we believe that operators generally would not provide such services in the absence of a franchising requirement. Because such costs are largely beyond the control of the cable operator, we believe they should be passed on to subscribers without a cost-of-service showing.

In addition, under certain circumstances, we will permit operators to pass through to subscribers the cost of meeting franchise requirements that they remove aerial facilities and place them underground. However, the external cost pass through should be limited to cases where the operator has been required to actually remove cable from utility poles and place the same cable underground. We do not believe that external cost treatment should be afforded in cases where the franchise agreement requires the operator to place new cable facilities underground because we believe that this is a cost associated with a rebuild or an upgrade of the cable system and we have determined that we will not permit external cost treatment of upgrades or rebuilds. Moreover, costs associated with placing cable underground in these circumstances are costs that the operator could have incurred in absence of the franchise requirement as a result of the upgrade or rebuild.

We believe that increased costs resulting from normal maintenance or from a simple expansion of service within the franchise area should not be subject to external treatment. An operator may not pass through the costs associated with expanding the reach of its cable system even if such expansion is contained in the franchise documents. Accordingly, we reject NCTA's suggestion that external cost treatment should be imposed as long as the service is ''specifically required'' in the franchise agreement. Such a formulation of the rule could encompass costs that the cable operator could have incurred even in the absence of a specific franchise requirement or would be obligated to incur under pre-existing federal standards. We reject NATOA's suggestion to allow only obligations enumerated in a franchise agreement by a specific dollar amount as unduly complicating franchise negotiations. This would require parties to specify the costs of providing certain services or facilities where such costs may not be certain when the contract is negotiated.

As for the timing of the pass throughs of these costs, the operator will be required to amortize the cost of franchise imposed capital expenditures over the useful life of the items. We find such treatment appropriate because current subscribers should not be required to pay all costs associated with a service that will benefit future ratepayers as well. Consistent with interim rules governing cost-of-service showings, we find that operators will be permitted to recover an 11.25% rate of return on this investment.

Advertising of Rates

On reconsideration, we continue to believe that cable system operators covering multiple franchise areas that have different franchise fees, franchise costs, channel line-ups, or rate structures should be permitted to use the ''fee plus'' approach when they advertise their rates. We find that the ''fee plus'' approach provides operators that cover multiple franchise areas the flexibility to efficiently advertise their services to consumers. We disagree with Local Governments' assertion that the ''fee plus'' approach violates Section 622(c) of the Communications Act. Section 622(c) permits operators to itemize certain fees imposed by franchise and governmental authorities. While operators are allowed to itemize certain fees on a subscribers bill, Congress intended that cable operators only be permitted to require one payment from subscribers for services. We find that because the ''fee plus'' approach only addresses how an operator serving multiple franchise areas may advertise services, it is not related to the operator's billing practices and does not, therefore, violate the intent of Section 622(c). Moreover, we believe that the ''fee plus'' approach is consistent with the spirit of the subscriber bill itemization requirements in Section 622(c) of the 1992 Cable Act and Section 76.985 of the Commission's rules because it permits operators to inform consumers of the amount of franchise fees without confusing them as to the total cost of cable service.

We believe that operators should be permitted to advertise their rates using

either of the methods described above because both methods of advertising reasonably informs potential subscribers of the true price of cable service. This approach is consistent with the Commission's goal of enhancing industry's flexibility in making business and marketing decisions wherever reasonably possible. Therefore, we affirm our decision to allow cable systems that cover multiple franchise areas to advertise a range of fees of a ''fee plus'' rate that take account of variations in the itemized costs throughout the franchise area.

Although Local Governments are concerned that the ''fee plus'' approach may result in a reduction in the amount of franchise fees that franchising authorities may assess, we decline to address this matter in this Order. The Cable Services Bureau has issued a decision regarding the proper assessment of franchise fees, and is currently reviewing a number of petitions for reconsideration filed in response to that decision.

Franchise Fee Refunds

On reconsideration, we find that franchising authorities may determine whether a franchise fee overpayment is to be returned to the cable operator in one lump sum payment or by offsetting the overcharges against future franchise fee payments, provided that the overcharges are returned to the operator within a reasonable period of time. We recognize that in most instances, the operator holds franchise fees on behalf of the franchising authority for lump sum payment at the end of an agreed upon period. In those situations, the operator should offset the overpayments against the franchise fees it then holds. In the rare instances where the overpayments are very large, the franchising authority has the discretion to determine a reasonable repayment period plus interest. Because we have already determined that 11.25% is presumptively the cable operator's cost of capital, we find that the interest rate presumptively should be 11.25%.

We agree with NATOA that franchising authorities should have the discretion to determine the means by which overpayments are to be returned to cable operators because it would be inappropriate to permit cable operators to dictate how the franchising authority should recompense operators. Moreover, in certain cases, the franchise fee overpayment may have been spent before it has been determined that an overpayment has been made and the franchising authority may not have the funds to immediately return the overpayment. However, we also believe that operators are entitled to receive interest on any franchise fee overpayments if franchising authorities delay returning overpayments to operators and that, in any case, operators should have overpayments returned within a reasonable period of time. We find that the meaning of ''reasonable period of time'' is dependent upon the amount of the overcharge and the relationship it bears to a franchising authority's budget. That is, the larger the absolute amount of the overpayment and the larger its amount in relation to a franchising authority's budget, the longer the franchising authority may need either to credit the operator for future franchise fee payments or to make a lump sum payment to the operator. We believe that this approach balances the franchising authority's need to have discretion in determining the means by which overcharges are returned with the operator's need to have such overcharges returned within a reasonable period of time.

Regulatory Review of Existing Rates

On our own motion, we have decided to end regulatory review of the operator's entire rate structure when we receive future CPST rate complaints. Operators that have never been subject to CPST rate regulation will not face Commission review of their entire rate structure if a complaint is filed after the effective date of these rules. Complaints filed after the effective date of these rules on subsequent CPST rate changes must be field with the Commission within 45 days of the date subscribers receive a bill reflecting the operator's next CPST rate increase, and will result in Commission review of only the amount of the rate increase complained about.

Although Commission review will be so limited, in order to meet its burden of showing that its CPST rates are not unreasonable, the operator nevertheless may have to provide the Commission with details about its previous increases where no earlier filing provides those details. For example, an operator that attempts to use the new Going Forward method for channel additions in its current filing may need to demonstrate that its current increase, in conjunction with its previous rate increases, does not exceed the operator's cap. As another example, if no complaint was filed for the operator's relevant earlier rate adjustments, an operator that adjusts its rates using the annual rate adjustment method should provide the projections on which the operator's previous rates were based so that the Commission can review the operator's true up in its current filing.

We are eliminating review of an operator's entire rate structure because we find that continuing this policy creates an uncertain business environment for cable operators that have not had their CPSTs subject to rate regulation. We are concerned about this because an uncertain business environment may generally discourage investment, without which operators may lack the resources to upgrade their networks, add new programming services, and provide new innovative services.

We find that, if no rate complaint is filed prior to the effective date of these rules, the operator's initial CPST rates under regulation are not unreasonable. In our view, subscribers and franchising authorities have had ample opportunity to file a complaint that would result in Commission review of operators' entire rate structure. It has been nearly two years since subscribers and franchising authorities first had the opportunity to complain about their CPST rates. Since September 1, 1993, subscribers had an initial 180 day period to complain about initial CPST rates. If they missed the opportunity to complain during this initial 180 day period, they could have complained about any subsequent rate increase and that would have triggered a review of the operator's entire rate structure. We believe that if subscribers and the franchising authority have not filed a CPST rate complaint, it indicates a level of satisfaction with their current rates that would not exist if they believe CPST rates were unreasonable. We also believe that the Commission can fulfill its responsibility to ensure that CPST rates are not unreasonable when only reviewing rate changes.

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601–612, the Commission's final analysis with respect to the *Thirteenth Order on Reconsideration* is as follows:

Need and purpose of this action. The Commission, in compliance with section 3 of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. 543 (1992), pertaining to rate regulation, adopts revised rules and procedures intended to ensure that cable services are offered at reasonable rates with minimum regulatory and administrative burdens on cable entities.

Summary of issues raised by the public in response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory

Flexibility Analysis. The Chief Counsel for Advocacy of the United States Small Business Administration (SBA) filed comments in the original rulemaking order. The Commission addressed the concerns raised by the Office of Advocacy in the *Rate Order* 58 FR 29736 (5/21/93). The SBA also filed reply comments in response to the *Fifth Notice* 59 FR 18064 (4/15/94). The Commission addressed those comments in the *Fifth Report and Order* 59 FR 62614 (12/6/94).

Significant alternatives considered and rejected. Petitioners representing cable interests and franchising authorities submitted several alternatives aimed at minimizing administrative burdens. In this proceeding, the Commission has attempted to accommodate the concerns expressed by these parties. For example, the revised rules permitting the expedited pass through of certain external costs are designed to reduce administrative burdens on industry. In addition, the revised rules permitting operators to recover the full portion of previously incurred increases in external costs are designed to maintain and enhance incentives for cable operators to achieve efficiency cost savings and reduce administrative burdens on both industry and regulators. Finally, the *Order* further reduces burdens by clarifying rules concerning the advertising of rates, the refunds of franchise fees, and the costs related to franchise requirements.

Paperwork Reduction Act

The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 303(r), 612, 622(c) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 532, 542(c) and 543, the rules, requirements and policies discussed in this Thirteenth Order on Reconsideration, are adopted and part 76 of the Commission's rules, 47 CFR part 76, is amended as set forth below.

It is further ordered that the Secretary shall send a copy of this Report and Order to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

It is further ordered that the requirements and regulations established in this decision shall become effective thirty (30) days after publication in the Federal Register, except that new reporting requirements shall take effect thirty (30) days after approval by the Office of Management and Budget.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309; Secs. 612, 614–615, 623, 632 as amended, 106 Stat. 1460, 47 U.S.C. 532; Sec. 623, as amended, 106 Stat. 1460; 47 U.S.C. 532, 533, 535, 543, 552.

2. Section 76.922 is amended by redesignating paragraphs (e) through (k) as paragraphs (g) through (m), respectively, revising paragraphs (c) and (d), and newly redesignated paragraphs (g), (h), (i), (j), (k), (l), (m) and adding new paragraphs (e) and (f), to read as follows:

§ 76.922 Rates for the basic service tier and cable programming services tiers.

* * * * *

(c) *Subsequent permitted charge.* (1) The permitted charge for a tier after May 15, 1994 shall be, at the election of the cable system, either:

(i) A rate determined pursuant to a cost-of-service showing,

(ii) A rate determined by application of the Commission's price cap requirements set forth in paragraph (d) of this section to a permitted rate determined in accordance with paragraph (b) of this section, or

(iii) A rate determined by application of the Commission's price cap requirements set forth in paragraph (e) of this section to a permitted rate determined in accordance with paragraph (b) of this section.

(2) The Commission's price cap requirements allow a system to adjust its permitted charges for inflation, changes in the number of regulated channels on tiers, or changes in external costs. After May 15, 1994, adjustments for changes in external costs shall be calculated by subtracting external costs from the system's permitted charge and making changes to that ''external cost component'' as necessary. The remaining charge, referred to as the ''residual component,'' will be adjusted annually for inflation. Cable systems may adjust their rates by using the price cap rules contained in either paragraphs (d) or (e) of this section.

(3) An operator may switch between the quarterly rate adjustment option contained in paragraph (d) of this section and the annual rate adjustment option contained in paragraph (e) of this section, provided that:

(i) Whenever an operator switches from the current quarterly system to the annual system, the operator may not file a Form 1240 earlier than 90 days after the operator proposed its last rate adjustment on a Form 1210; and

(ii) When an operator changes from the annual system to the quarterly system, the operator may not return to a quarterly adjustment using a Form 1210 until a full quarter after it has filed a true up of its annual rate on a Form 1240 for the preceding filing period.

(4) An operator that does not set its rates pursuant to a cost-of-service filing must use the quarterly rate adjustment methodology pursuant to paragraph (d) of this section or annual rate adjustment methodology pursuant to paragraph (e) of this section for both its basic service tier and its cable programming services tier(s).

(d) *Quarterly rate adjustment method*—(1) *Calendar year quarters.* All systems using the quarterly rate adjustment methodology must use the following calendar year quarters when adjusting rates under the price cap requirements. The first quarter shall run from January 1 through March 31 of the relevant year; the second quarter shall run from April 1 through June 30; the third quarter shall run from July 1 through September 30; and the fourth quarter shall run from October 1 through December 31.

(2) *Inflation Adjustments.* The residual component of a system's permitted charge may be adjusted annually for inflation. The annual inflation adjustment shall be used on inflation occurring from June 30 of the previous year to June 30 of the year in which the inflation adjustment is made, except that the first annual inflation adjustment shall cover inflation from September 30, 1993 until June 30 of the year in which the inflation adjustment

is made. The adjustment may be made after September 30, but no later than August 31, of the next calendar year. Adjustments shall be based on changes in the Gross National Product Price Index as published by the Bureau of Economic Analysis of the United States Department of Commerce. Cable systems that establish a transition rate pursuant to paragraph (b)(4) of this section may not begin adjusting rates on account of inflation before April 1, 1995. Between April 1, 1995 and August 31, 1995 cable systems that established a transition rate may adjust their rates to reflect the net of a 5.21% inflation adjustment minus any inflation adjustments they have already received. Low price systems that had their March 31, 1994 rates above the benchmark, but their full reduction rate below the benchmark will be permitted to adjust their rates to reflect the full 5.21% inflation factor unless the rate reduction was less than the inflation adjustment received on an FCC Form 393 for rates established prior to May 15, 1994. If the rate reduction established by a low price system that reduced its rate to the benchmark was less than the inflation adjustment received on an FCC Form 393, the system will be permitted to receive the 5.21% inflation adjustment minus the difference between the rate reduction and the inflation adjustment the system made on its FCC Form 393. Cable systems that established a transition rate may make future inflation adjustments on an annual basis with all other cable operators, no earlier than October 1 of each year and no later than August 31 of the following year to reflect the final GNP–PI through June 30 of the applicable year.

(3) *External costs.* (i) Permitted charges for a tier may be adjusted up to quarterly to reflect changes in external costs experienced by the cable system as defined by paragraph (f) of this section. In all events, a system must adjust its rates annually to reflect any decreases in external costs that have not previously been accounted for in the system's rates. A system must also adjust its rates annually to reflect any changes in external costs, inflation and the number of channels on regulated tiers that occurred during the year if the system wishes to have such changes reflected in its regulated rates. A system that does not adjust its permitted rates annually to account for those changes will not be permitted to increase its rates subsequently to reflect the changes.

(ii) A system must adjust its rates in the next calendar year quarter for any decrease in programming costs that results from the deletion of a channel or channels from a regulated tier.

(iii) Any rate increase made to reflect an increase in external costs must also fully account for all other changes in external costs, inflation and the number of channels on regulated tiers that occurred during the same period. Rate adjustments made to reflect changes in external costs shall be based on any changes in those external costs that occurred from the end of the last quarter for which an adjustment was previously made through the end of the quarter that has most recently closed preceding the filing of the FCC Form 1210 (or FCC Form 1211, where applicable). A system may adjust its rates after the close of a quarter to reflect changes in external costs that occurred during that quarter as soon as it has sufficient information to calculate the rate change.

(e) *Annual rate adjustment method—(1) Generally.* Except as provided for in paragraphs (e)(2)(iii)(B) and (e)(2)(iii)(C) of this section and Section 76.923(o), operators that elect the annual rate adjustment method may not adjust their rates more than annually to reflect inflation, changes in external costs, changes in the number of regulated channels, and changes in equipment costs. Operators that make rate adjustments using this method must file on the same date a Form 1240 for the purpose of making rate adjustments to reflect inflation, changes in external costs and changes in the number of regulated channels and a Form 1205 for the purpose of adjusting rates for regulated equipment and installation. Operators may choose the annual filing date, but they must notify the franchising authority of their proposed filing date prior to their filing. Franchising authorities or their designees may reject the annual filing date chosen by the operator for good cause. If the franchising authority finds good cause to reject the proposed filing date, the franchising authority and the operator should work together in an effort to reach a mutually acceptable date. If no agreement can be reached, the franchising authority may set the filing date up to 60 days later than the date chosen by the operator. An operator may change its filing date from year-to-year, but except as described in paragraphs (e)(2)(iii)(B) and (e)(2)(iii)(C) of this section, at least twelve months must pass before the operator can implement its next annual adjustment.

(2) *Projecting Inflation, Changes in External Costs, and Changes in Number of Regulated Channels.* An operator that elects the annual rate adjustment method may adjust its rates to reflect inflation, changes in external costs and changes in the number of regulated channels that are projected for the 12 months following the date the operator is scheduled to make its rate adjustment pursuant to Section 76.933(g).

(i) *Inflation Adjustments.* The residual component of a system's permitted charge may be adjusted annually to project for the 12 months following the date the operator is scheduled to make a rate adjustment. The annual inflation adjustment shall be based on inflation that occurred in the most recently completed July 1 to June 30 period. Adjustments shall be based on changes in the Gross National Product Price Index as published by the Bureau of Economic Analysis of the United States Department of Commerce.

(ii) *External costs.* (A) Permitted charges for a tier may be adjusted annually to reflect changes in external costs experienced but not yet accounted for by the cable system, as well as for projections in these external costs for the 12-month period on which the filing is based. In order that rates be adjusted for projections in external costs, the operator must demonstrate that such projections are reasonably certain and reasonably quantifiable. Projections involving copyright fees, retransmission consent fees, other programming costs, Commission regulatory fees, and cable specific taxes are presumed to be reasonably certain and reasonably quantifiable. Operators may project for increases in franchise related costs to the extent that they are reasonably certain and reasonably quantifiable, but such changes are not presumed reasonably certain and reasonably quantifiable. Operators may pass through increases in franchise fees pursuant to Section 76.933(g).

(B) In all events, a system must adjust its rates every twelve months to reflect any net decreases in external costs that have not previously been accounted for in the system's rates.

(C) Any rate increase made to reflect increases or projected increases in external costs must also fully account for all other changes and projected changes in external costs, inflation and the number of channels on regulated tiers that occurred or will occur during the same period. Rate adjustments made to reflect changes in external costs shall be based on any changes, plus projections, in those external costs that occurred or will occur in the relevant time periods since the periods used in the operator's most recent previous FCC Form 1240.

(iii) *Channel Adjustments.* (A) Permitted charges for a tier may be adjusted annually to reflect changes not yet accounted for in the number of regulated channels provided by the cable system, as well as for projected

changes in the number of regulated channels for the 12-month period on which the filing is based. In order that rates be adjusted for projected changes to the number of regulated channels, the operator must demonstrate that such projections are reasonably certain and reasonably quantifiable.

(B) An operator may make rate adjustments for the addition of required channels to the basic service tier that are required under federal or local law at any time such additions occur, subject to the filing requirements of Section 76.933(g)(2), regardless of whether such additions occur outside of the annual filing cycle. Required channels may include must-carry, local origination, public, educational and governmental access and leased access channels. Should the operator elect not to pass through the costs immediately, it may accrue the costs of the additional channels plus interest, as described in paragraph (e)(3) of this section.

(C) An operator may make one additional rate adjustment during the year to reflect channel additions to the cable programming services tiers or, where the operator offers only one regulated tier, the basic service tier. Operators may make this additional rate adjustment at any time during the year, subject to the filing requirements of Section 76.933(g)(2), regardless of whether the channel addition occurs outside of the annual filing cycle. Should the operator elect not to pass through the costs immediately, it may accrue the costs of the additional channels plus interest, as described in paragraph (e)(3) of this section.

(3) *True-up and Accrual of Charges Not Projected.* As part of the annual rate adjustment, an operator must ''true up'' its previously projected inflation, changes in external costs and changes in the number of regulated channels and adjust its rates for these actual cost changes. The operator must decrease its rates for overestimation of its projected cost changes, and may increase its rates to adjust for underestimation of its projected cost changes.

(i) Where an operator has underestimated costs, future rates may be increased to permit recovery of the accrued costs plus 11.25% interest between the date the costs are incurred and the date the operator is entitled to make its rate adjustment.

(ii) Where there is an overestimation of these costs, future rates will be reduced or the amount of the increase will be reduced to reflect the accrued amount of the overcharge plus 11.25% interest. The operator must make such adjustments within 12 months of the date the operator implemented its rates based on the projections.

(iii) If an operator has underestimated its cost changes and elects not to recover these accrued costs with interest on the date the operator is entitled to make its annual rate adjustment, the interest will cease to accrue as of the date the operator is entitled to make the annual rate adjustment, but the operator will not lose its ability to recover such costs and interest. An operator may recover accrued costs between the date such costs are incurred and the date the operator actually implements its rate adjustment.

(iv) Operators that use the annual methodology in their next filing after the release date of this Order may accrue costs and interest incurred since July 1, 1995 in that filing. Operators that file a Form 1210 in their next filing after the release date of this Order, and elect to use Form 1240 in a subsequent filing, may accrue costs incurred since the end of the last quarter to which a Form 1210 applies.

(4) *Sunset Provision.* The Commission will review paragraph (e) of this section prior to December 31, 1998 to determine whether the annual rate adjustment methodology should be kept, and whether the quarterly system should be eliminated and replaced with the annual rate adjustment method.

(f) *External costs.* (1) External costs shall consist of costs in the following categories:

(i) State and local taxes applicable to the provision of cable television service;

(ii) Franchise fees;

(iii) Costs of complying with franchise requirements, including costs of providing public, educational, and governmental access channels as required by the franchising authority;

(iv) Retransmission consent fees and copyright fees incurred for the carriage of broadcast signals;

(v) Other programming costs; and

(vi) Commission cable television system regulatory fees imposed pursuant to 47 U.S.C. § 159.

(2) The permitted charge for a regulated tier shall be adjusted on account of programming costs, copyright fees and retransmission consent fees only for the program channels or broadcast signals offered on that tier.

(3) The permitted charge shall not be adjusted for costs of retransmission consent fees or changes in those fees incurred prior to October 6, 1994.

(4) The starting date for adjustments on account of external costs for a tier of regulated programming service shall be the earlier of the initial date of regulation for any basic or cable service tier or February 28, 1994.

(5) Changes in franchise fees shall not result in an adjustment to permitted charges, but rather shall be calculated separately as part of the maximum monthly charge per subscriber for a tier of regulated programming service.

(6) Adjustments to permitted charges to reflect changes in the costs of programming purchased from affiliated programmers, as defined in § 76.901, shall be permitted as long as the price charged to the affiliated system reflects either prevailing company prices offered in the marketplace to third parties (where the affiliated program supplier has established such prices) or the fair market value of the programming.

(7) Adjustments to permitted charges on account of increases in costs of programming shall be further adjusted to reflect any revenues received by the operator from the programmer. Such adjustments shall apply on a channel-by-channel basis.

(8) In calculating programming expense, operators may add a mark-up of 7.5% for increases in programming costs occurring after March 31, 1994, except that operators may not file for or take the 7.5% mark-up on programming costs for new channels added on or after May 15, 1994 for which the operator has used the methodology set forth in paragraph (g)(3) of this section for adjusting rates for channels added to cable programming service tiers. Operators shall reduce rates by decreases in programming expense plus an additional 7.5% for decreases occurring after May 15, 1994 except with respect to programming cost decreases on channels added after May 15, 1994 for which the rate adjustment methodology in paragraph (g)(3) of this section was used.

(g) *Changes in the number of channels on regulated tiers.*—(1) *Generally.* A system may adjust the residual component of its permitted rate for a tier to reflect changes in the number of channels offered on the tier on a quarterly basis. Cable systems shall use FCC Form 1210 (or FCC Form 1211, where applicable) or FCC Form 1240 to justify rate changes made on account of changes in the number of channels on a basic service tier (''BST'') or a cable programming service tier (''CPST''). Such rate adjustments shall be based on any changes in the number of regulated channels that occurred from the end of the last quarter for which an adjustment was previously made through the end of the quarter that has most recently closed preceding the filing of the FCC Form 1210 (or FCC Form 1211, where applicable) or FCC Form 1240.

However, when a system deletes channels in a calendar quarter, the system must adjust the residual component of the tier charge in the next calendar quarter to reflect that deletion. Operators must elect between the channel addition rules in paragraphs (g)(2) and (g)(3) of this section the first time they adjust rates after December 31, 1994, to reflect a channel addition to a CPST that occurred on or after May 15, 1994, and must use the elected methodology for all rate adjustments through December 31, 1997. A system that adjusted rates after May 15, 1994, but before January 1, 1995 on account of a change in the number of channels on a CPST that occurred after May 15, 1994, may elect to revise its rates to charge the rates permitted by paragraph (g)(3) of this section on or after January 1, 1995, but is not required to do so as a condition for using the methodology in paragraph (g)(3) of this section for rate adjustments after January 1, 1995. Rates for the BST will be governed exclusively by paragraph (g)(2) of this section, except that where a system offered only one tier on May 14, 1994, the cable operator will be allowed to elect between paragraphs (g)(2) and (g)(3) of this section as if the tier was a CPST.

(2) *Adjusting Rates for increases in the number of channels offered between May 15, 1994, and December 31, 1997, on a basic service tier and at the election of the operator on a cable programming service tier.* The following table shall be used to adjust permitted rates for increases in the number of channels offered between May 15, 1994, and December 31, 1997, on a basic service tier and subject to the conditions in paragraph (g)(1) of this section at the election of the operator on a CPST. The entries in the table provide the cents per channel per subscriber per month by which cable operators will adjust the residual component using FCC Form 1210 (or FCC Form 1211, where applicable) or FCC Form 1240.

Average No. of regulated channels	Per-channel adjustment factor
7	$0.52
7.5	0.45
8	0.40
8.5	0.36
9	0.33
9.5	0.29
10	0.27
10.5	0.24
11	0.22
11.5	0.20
12	0.19
12.5	0.17
13	0.16
13.5	0.15
14	0.14
14.5	0.13
15–15.5	0.12
16	0.11
16.5–17	0.10
17.5–18	0.09
18.5–19	0.08
19.5–21.5	0.07
22–23.5	0.06
24–26	0.05
26.5–29.5	0.04
30–35.5	0.03
36–46	0.02
46.5–99.5	0.01

In order to adjust the residual component of the tier charge when there is an increase in the number of channels on a tier, the operator shall perform the following calculations:

(i) Take the sum of the old total number of channels on tiers subject to regulation (*i.e.,* tiers that are, or could be, regulated but excluding New Product Tiers) and the new total number of channels and divide the resulting number by two;

(ii) Consult the above table to find the applicable per channel adjustment factor for the number of channels produced by the calculations in step (1). For each tier for which there has been an increase in the number of channels, multiply the per-channel adjustment factor times the change in the number of channels on that tier. The result is the total adjustment for that tier.

(3) *Alternative methodology for adjusting rates for changes in the number of channels offered on a cable programming service tier or a single tier system between May 15, 1994, and December 31, 1997.* This paragraph at the Operator's discretion as set forth in paragraph (g)(1) of this section shall be used to adjust permitted rates for a CPST after December 31, 1994, for changes in the number of channels offered on a CPST between May 15, 1994, and December 31, 1997. For purposes of paragraph (g)(3) of this section, a single tier system may be treated as if it were a CPST.

(i) *Operators Cap Attributable to New Channels on All CPSTs Through December 31, 1997.* Operators electing to use the methodology set forth in this paragraph may increase their rates between January 1, 1995, and December 31, 1997, by up to 20 cents per channel, exclusive of programming costs, for new channels added to CPSTs on or after May 15, 1994, except that they may not make rate adjustments totalling more than $1.20 per month, per subscriber through December 31, 1996, and by more than $1.40 per month, per subscriber through December 31, 1997 (the ''Operator's Cap''). Except to the extent that the programming costs of such channels are covered by the License Fee Reserve provided for in paragraph (g)(3)(iii) of this section, programming costs associated with channels for which a rate adjustment is made pursuant to this paragraph (g)(3) of this section must fall within the Operators' Cap if the programming costs (including any increases therein) are reflected in rates before January 1, 1997. Inflation adjustments pursuant to paragraph (d)(2) or (e)(2) of this section are not counted against the Operator's Cap.

(ii) *Per Channel Adjustment.* Operators may increase rates by a per channel adjustment of up to 20 cents per subscriber per month, exclusive of programming costs, for each channel added to a CPST between May 15, 1994, and December 31, 1997, except that an operator may take the per channel adjustment only for channel additions that result in an increase in the highest number of channels offered on all CPSTs as compared to May 14, 1994, and each date thereafter. Any revenues received from a programmer, or shared by a programmer and an operator in connection with the addition of a channel to a CPST shall first be deducted from programming costs for that channel pursuant to paragraph (f)(7) of this section and then, to the extent revenues received from the programmer are greater than the programming costs, shall be deducted from the per channel adjustment. This deduction will apply on a channel by channel basis.

(iii) *License Fee Reserve.* In addition to the rate adjustments permitted in paragraphs (g)(3)(i) and (g)(3)(ii) of this section, operators that make channel additions on or after May 15, 1994 may increase their rates by a total of 30 cents per month, per subscriber between January 1, 1995, and December 31, 1996, for license fees associated with such channels (the ''License Fee Reserve''). The License Fee Reserve may be applied against the initial license fee and any increase in the license fee for such channels during this period. An operator may pass-through to subscribers more than the 30 cents between January 1, 1995, and December 31, 1996, for license fees associated with channels added after May 15, 1994, provided that the total amount recovered from subscribers for such channels, including the License Fee Reserve, does not exceed $1.50 per subscriber, per month. After December 31, 1996, license fees may be passed through to subscribers pursuant to

paragraph (f) of this section, except that license fees associated with channels added pursuant to this paragraph (3) will not be eligible for the 7.5% mark-up on increases in programming costs.

(iv) *Timing.* For purposes of determining whether a rate increase counts against the maximum rate increases specified in paragraphs (g)(3)(i) through (g)(3)(ii) of this section, the relevant date shall be when rates are increased as a result of channel additions, not when the addition occurs.

(4) *Deletion of Channels.* When dropping a channel from a BST or CPST, operators shall reflect the net reduction in external costs in their rates pursuant to paragraphs (d)(3)(i) and (d)(3)(ii) of this section, or paragraphs (e)(2)(ii)(A) and (e)(2)(ii)(B) of this section. With respect to channels to which the 7.5% mark-up on programming costs applied pursuant to paragraph (f)(8) of this section, the operator shall treat the mark-up as part of its programming costs and subtract the mark-up from its external costs. Operators shall also reduce the price of that tier by the ''residual'' associated with that channel. For channels that were on a BST or CPST on May 14, 1994, or channels added after that date pursuant to paragraph (g)(2) of this section, the per channel residual is the charge for their tier, minus the external costs for the tier, and any per channel adjustments made after that date, divided by the total number of channels on the tier minus the number of channels on the tier that received the per channel adjustment specified in paragraph (g)(3) of this section. For channels added to a CPST after May 14, 1994, pursuant to paragraph (g)(3) of this section, the residuals shall be the actual per channel adjustment taken for that channel when it was added to the tier.

(5) *Movement of Channels Between Tiers.* When a channel is moved from a CPST or a BST to another CPST or BST, the price of the tier from which the channel is dropped shall be reduced to reflect the decrease in programming costs and residual as described in paragraph (g)(4) of this section. The residual associated with the shifted channel shall then be converted from per subscriber to aggregate numbers to ensure aggregate revenues from the channel remain the same when the channel is moved. The aggregate residual associated with the shifted channel may be shifted to the tier to which the channel is being moved. The residual shall then be converted to per subscriber figures on the new tier, plus any subsequent inflation adjustment. The price of the tier to which the channel is shifted may then be increased to reflect this amount. The price of that tier may also be increased to reflect any increase in programming cost. An operator may not shift a channel for which it received a per channel adjustment pursuant to paragraph (g)(3) of this section from a CPST to a BST.

(6) *Substitution of Channels on a BST or CPST.* If an operator substitutes a new channel for an existing channel on a CPST or a BST, no per channel adjustment may be made. Operators substituting channels on a CPST or a BST shall be required to reflect any reduction in programming costs in their rates and may reflect any increase in programming costs pursuant to paragraphs (d)(3)(i) and (d)(3)(ii), or paragraphs (e)(2)(ii)(A) and (e)(2)(ii)(B) of this section. If the programming cost for the new channel is greater than the programming cost for the replaced channel, and the operator chooses to pass that increase through to subscribers, the excess shall count against the License Fee Reserve or the Operator Cap when the increased cost is passed through to subscribers. Where an operator substitutes a new channel for a channel on which a 7.5% mark-up on programming costs was taken pursuant to paragraph (f)(8) of this section, the operator may retain the 7.5% mark-up on the license fee of the dropped channel to the extent that it is no greater than 7.5% of programming cost of the new service.

(7) *Headend upgrades.* When adding channels to CPSTs and single-tier systems, cable systems that are owned by a small cable company and incur additional monthly per subscriber headend costs of one full cent or more for an additional channel may choose among the methodologies set forth in paragraphs (g)(2) and (g)(3) of this section. In addition, such systems may increase rates to recover the actual cost of the headend equipment required to add up to seven such channels to CPSTs and single-tier systems, not to exceed $5,000 per additional channel. Rate increases pursuant to this paragraph may occur between January 1, 1995, and December 31, 1997, as a result of additional channels offered on those tiers after May 14, 1994. Headend costs shall be depreciated over the useful life of the equipment. The rate of return on this investment shall not exceed 11.25 percent. In order to recover costs for headend equipment pursuant to this paragraph, systems must certify to the Commission their eligibility to use this paragraph, and the level of costs they have actually incurred for adding the headend equipment and the depreciation schedule for the equipment.

(8) *Sunset Provision.* Paragraph (g) of this section shall cease to be effective on January 1, 1998 unless renewed by the Commission.

(h) Permitted charges for a tier shall be determined in accordance with forms and associated instructions established by the Commission.

(i) *Cost of Service Charge.* (1) For purposes of this section, a monthly cost-of-service charge for a basic service tier or a cable programming service tier is an amount equal to the annual revenue requirement for that tier divided by a number that is equal to 12 times the average number of subscribers to that tier during the test year, except that a monthly charge for a system or tier in service less than one year shall be equal to the projected annual revenue requirement for the first 12 months of operation or service divided by a number that is equal to 12 times the projected average number of subscribers during the first 12 months of operation or service. The calculation of the average number of subscribers shall include all subscribers, regardless of whether they receive service at full rates or at discounts.

(2) A test year for an initial regulated charge is the cable operator's fiscal year preceding the initial date of regulation. A test year for a change in the basic service charge that is after the initial date of regulation is the cable operator's fiscal year preceding the mailing or other delivery of written notice pursuant to Section 76.932. A test year for a change in a cable programming service charge after the initial date of regulation is the cable operator's fiscal year preceding the filing of a complaint regarding the increase.

(3) The annual revenue requirement for a tier is the sum of the return component and the expense component for that tier.

(4) The return component for a tier is the average allowable test year ratebase allocable to the tier adjusted for known and measurable changes occurring between the end of the test year and the effective date of the rate multiplied by the rate of return specified by the Commission or franchising authority.

(5) The expense component for a tier is the sum of allowable test year expenses allocable to the tier adjusted for known and measurable changes occurring between the end of the test year and the effective date of the rate.

(6) The ratebase may include the following:

(i) Prudent investment by a cable operator in tangible plant that is used and useful in the provision of cable

services less accumulated depreciation. Tangible plant in service shall be valued at the actual money cost (or the money value of any consideration other than money) of property at the time it was first used to provide cable service. The actual money cost of plant may include an allowance for funds used during construction at the prime rate or at the operator's actual cost of funds used during construction. Cost overruns are presumed to be imprudent investment in the absence of a showing that the overrun occurred through no fault of the operator.

(ii) An allowance for start-up losses, if any, that is equal to the lesser of the first two years of operating costs or accumulated losses incurred until the system reached the end of its prematurity stage as defined in Financial Accounting Standards Board Standard 51 (''FASB 51'') less straight-line amortization over a reasonable period not exceeding 15 years that commences at the end of the prematurity phase of operation.

(iii) Intangible assets less amortization that reflect the original costs prudently incurred by a cable operator in organizing and incorporating a company that provides regulated cable services, obtaining a government franchise to provide regulated cable services, or obtaining patents that are used and useful in the provision of cable services.

(iv) The cost of customer lists if such costs were capitalized during the prematurity phase of operations less amortization.

(v) An amount for working capital to the extent that an allowance or disallowance for funds needed to sustain the ongoing operations of the regulated cable service is demonstrated.

(vi) Other intangible assets to the extent the cable operator demonstrates that the asset reflects costs incurred in an activity or transaction that produced concrete benefits or savings for subscribers to regulated cable services that would not have been realized otherwise and the cable operator demonstrates that a return on such an asset does not exceed the value of such a subscriber benefit.

(vii) The portion of the capacity of plant not currently in service that will be placed in service within twelve months of the end of the test year.

(7) Deferred income taxes shall be deducted from items included in the ratebase.

(8) Allowable expenses may include the following:

(i) All regular expenses normally incurred by a cable operator in the provision of regulated cable service, but not including any lobbying expense, charitable contributions, penalties and fines paid on account of violations of statutes or rules, or membership fees in social, service, recreational or athletic clubs or organizations.

(ii) Reasonable depreciation expense attributable to tangible assets allowable in the ratebase.

(iii) Reasonable amortization expense for prematurely abandoned tangible assets formerly includable in the ratebase that are amortized over the remainder of the original expected life of the asset.

(iv) Reasonable amortization expense for start-up losses and capitalized intangible assets that are includable in ratebase.

(v) Taxes other than income taxes attributable to the provision of regulated cable services.

(vi) An income tax allowance.

(j) *Network upgrade rate increase.* (1) Cable operators that undertake significant network upgrades requiring added capital investment may justify an increase in rates for regulated services by demonstrating that the capital investment will benefit subscribers.

(2) A rate increase on account of upgrades shall not be assessed on customers until the upgrade is complete and providing benefits to customers of regulated services.

(3) Cable operators seeking an upgrade rate increase have the burden of demonstrating the amount of the net increase in costs, taking into account current depreciation expense, likely changes in maintenance and other costs, changes in regulated revenues and expected economies of scale.

(4) Cable operators seeking a rate increase for network upgrades shall allocate net cost increases in conformance with the cost allocation rules as set forth in § 76.924.

(5) Cable operators that undertake significant upgrades shall be permitted to increase rates by adding the benchmark/price cap rate to the rate increment necessary to recover the net increase in cost attributable to the upgrade.

(k) *Hardship rate relief.* A cable operator may adjust charges by an amount specified by the Commission for the cable programming service tier or the franchising authority for the basic service tier if it is determined that:

(1) Total revenues from cable operations, measured at the highest level of the cable operator's cable service organization, will not be sufficient to enable the operator to attract capital or maintain credit necessary to enable the operator to continue to provide cable service;

(2) The cable operator has prudent and efficient management; and

(3) Adjusted charges on account of hardship will not result in total charges for regulated cable services that are excessive in comparison to charges of similarly situated systems.

(l) *Cost of service showing.* A cable operator that elects to establish a charge, or to justify an existing or changed charge for regulated cable service, based on a cost-of-service showing must submit data to the Commission or the franchising authority in accordance with forms established by the Commission. The cable operator must also submit any additional information requested by franchising authorities or the Commission to resolve questions in cost-of-service proceedings.

(m) *Subsequent Cost of Service Charges.* No cable operator may use a cost-of-service showing to justify an increase in any charge established on a cost-of-service basis for a period of 2 years after that rate takes effect, except that the Commission or the franchising authority may waive this prohibition upon a showing of unusual circumstances that would create undue hardship for a cable operator.

3. Section 76.923 is amended by adding paragraphs (n) and (o), to read as follows:

§ 76.923 Rates for equipment and installation used to receive the basic service tier.

* * * * *

(n) *Timing of Filings.* An operator shall file FCC Form 1205 in order to establish its maximum permitted rates at the following times:

(1) When the operator sets its initial rates under either the benchmark system or through a cost-of-service showing;

(2) Within 60 days of the end of its fiscal year, for an operator that adjusts its rates under the system described in Section 76.922(d) that allows it to file up to quarterly;

(3) On the same date it files its FCC Form 1240, for an operator that adjusts its rates under the annual rate adjustment system described in Section 76.922(e). If an operator elects not to file an FCC Form 1240 for a particular year, the operator must file a Form 1205 on the anniversary date of its last Form 1205 filing; and

(4) When seeking to adjust its rates to reflect the offering of new types of customer equipment other than in conjunction with an annual filing of Form 1205, 60 days before it seeks to adjust its rates to reflect the offering of new types of customer equipment.

(o) *Introduction of new equipment.* In setting the permitted charge for a new

type of equipment at a time other than at its annual filing, an operator shall only complete Schedule C and the relevant step of the Worksheet for Calculating Permitted Equipment and Installation Charges of a Form 1205. The operator shall rely on entries from its most recently filed FCC Form 1205 for information not specifically related to the new equipment, including but not limited to the Hourly Service Charge. In calculating the annual maintenance and service hours for the new equipment, the operator should base its entry on the average annual expected time required to maintain the unit, i.e., expected service hours required over the life of the equipment unit being introduced divided by the equipment unit's expected life.

4. Section 76.925 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, adding new paragraph (a), and revising newly redesignated paragraph (c), to read as follows:

§ 76.925 Costs of franchise requirements.

(a) Franchise requirement costs may include cost increases required by the franchising authority in the following categories:

(1) Costs of providing PEG access channels;

(2) Costs of PEG access programming;

(3) Costs of technical and customer service standards to the extent that they exceed federal standards;

(4) Costs of institutional networks and the provision of video services, voice transmissions and data transmissions to or from governmental institutions and educational institutions, including private schools, to the extent such services are required by the franchise agreement; and

(5) When the operator is not already in the process of upgrading the system, costs of removing cable from utility poles and placing the same cable underground.

(b) The costs of satisfying franchise requirements to support public, educational, and government channels shall consist of the sum of:

(1) All per channel costs for the number of channels used to meet franchise requirements for public, educational, and governmental channels;

(2) Any direct costs of meeting such franchise requirements; and

(3) A reasonable allocation of general and administrative overhead.

(c) The costs of satisfying any requirements under the franchise other than PEG access costs shall consist of the direct and indirect costs including a reasonable allocation of general and administrative overhead.

5. Section 76.933 is amended by revising paragraphs (a), (b), (e), and (f), and adding paragraphs (g) and (h), to read as follows:

§ 76.933 Franchising authority review of basic cable rates and equipment costs.

(a) After a cable operator has submitted for review its existing rates for the basic service tier and associated equipment costs, or a proposed increase in these rates (including increases in the baseline channel change that results from reductions in the number of channels in a tier) under the quarterly rate adjustment system pursuant to Section 76.922(d), the existing rates will remain in effect or the proposed rates will become effective after 30 days from the date of submission; *Provided, however,* that the franchising authority may toll this 30-day deadline for an additional time by issuing a brief written order as described in paragraph (b) within 30 days of the rate submission explaining that it needs additional time to review the rates.

(b) If the franchising authority is unable to determine, based upon the material submitted by the cable operator, that the existing, or proposed rates under the quarterly adjustment system pursuant to Section 76.922(d), are within the Commission's permitted basic service tier charge or actual cost of equipment as defined in §§ 76.922 and 76.923, or if a cable operator has submitted a cost-of-service showing pursuant §§ 76.937(c) and 76.924, seeking to justify a rate above the Commission's basic service tier charge as defined in §§ 76.922 and 76.923, the franchising authority may toll the 30-day deadline in paragraph (a) of this section to request and/or consider additional information or to consider the comments from interested parties as follows:

(1) For an additional 90 days in cases not involving cost-of-service showings; or

(2) For an additional 150 days in cases involving cost-of-service showings.

* * * * *

(e) Notwithstanding the foregoing, when the franchising authority is regulating basic service tier rates, a cable operator that sets its rates pursuant to the quarterly rate adjustment system pursuant to Section 76.922(d) may increase its rates for basic service to reflect the imposition of, or increase in, franchise fees or Commission cable television system regulatory fees imposed pursuant to 47 U.S.C. § 159, upon 30 days' notice to subscribers and the franchising authority and, where required by Section 76.958, to the Commission. For the purposes of paragraphs (a) through (c) of this section, the increase rate attributable to Commission regulatory fees or franchise fees shall be treated as an ''existing rate, subject to subsequent review and refund if the franchising authority determines that the increase in basic tier rates exceeds the increase in regulatory fees or in franchise fees allocable to the basic tier. This determination shall be appealable to the Commission pursuant to Section 76.944. When the Commission is regulating basic service tier rates pursuant to Section 76.945 or cable programming service rates pursuant to Section 76.960, an increase in those rates resulting from franchise fees or Commission regulatory fees shall be reviewed by the Commission pursuant to the mechanisms set forth in Section 76.945. A cable operator must adjust its rates to reflect decreases in franchise fees or Commission regulatory fees within the periods set forth in Section 76.922(d)(3)(i) and (iii).

(f) For an operator that sets its rates pursuant to the quarterly rate adjustment system pursuant to Section 76.922(d), cable television system regulatory fees assessed by the Commission pursuant to 47 U.S.C. § 159 shall be recovered in monthly installments during the fiscal year following the year for which the payment was imposed. Payments shall be collected in equal monthly installments, except that for so many months as may be necessary to avoid fractional payments, an additional $0.01 payment per month may be collected. All such additional payments shall be collected in the last month or months of the fiscal year, so that once collections of such payments begin there shall be no month remaining in the year in which the operator is not entitled to such an additional payment. Operators may not assess interest. Operators may provide notice of the entire fiscal year's regulatory fee pass-through in a single notice.

(g) A cable operator that submits for review a proposed change in its existing rates for the basic service tier and associated equipment costs using the annual filing system pursuant to Section 76.922(e) shall do so no later than 90 days from the effective date of the proposed rates. The franchising authority will have 90 days from the date of the filing to review it. However, if the franchising authority or its designee concludes that the operator has submitted a facially incomplete filing, the franchising authority's deadline for issuing a decision, the date on which

rates may go into effect if no decision is issued, and the period for which refunds are payable will be tolled while the franchising authority is waiting for this information, provided that, in order to toll these effective dates, the franchising authority or its designee must notify the operator of the incomplete filing within 45 days of the date the filing is made.

(1) If there is a material change in an operator's circumstances during the 90-day review period and the change affects the operator's rate change filing, the operator may file an amendment to its Form 1240 prior to the end of the 90-day review period. If the operator files such an amendment, the franchising authority will have at least 30 days to review the filing. Therefore, if the amendment is filed more than 60 days after the operator made its initial filing, the operator's proposed rate change may not go into effect any earlier than 30 days after the filing of its amendment. However, if the operator files its amended application on or prior to the sixtieth day of the 90-day review period, the operator may implement its proposed rate adjustment, as modified by the amendment, 90 days after its initial filing.

(2) If a franchising authority has taken no action within the 90-day review period, then the proposed rates may go into effect at the end of the review period, subject to a prospective rate reduction and refund if the franchising authority subsequently issues a written decision disapproving any portion of such rates, *provided, however,* that in order to order a prospective rate reduction and refund, if an operator inquires as to whether the franchising authority intends to issue a rate order after the initial review period, the franchising authority or its designee must notify the operator of its intent in this regard within 15 days of the operator's inquiry. If a proposed rate goes into effect before the franchising authority issues its rate order, the franchising authority will have 12 months from the date the operator filed for the rate adjustment to issue its rate order. In the event that the franchising authority does not act within this 12-month period, it may not at a later date order a refund or a prospective rate reduction with respect to the rate filing.

(3) At the time an operator files its rates with the franchising authority, the operator may give customers notice of the proposed rate changes. Such notice should state that the proposed rate change is subject to approval by the franchising authority. If the operator is only permitted a smaller increase than was provided for in the notice, the operator must provide an explanation to subscribers on the bill in which the rate adjustment is implemented. If the operator is not permitted to implement any of the rate increase that was provided for in the notice, the operator must provide an explanation to subscribers within 60 days of the date of the franchising authority's decision. Additional advance notice is only required in the unlikely event that the rate exceeds the previously noticed rate.

(4) If an operator files for a rate adjustment under Section 76.922(e)(2)(iii)(B) for the addition of required channels to the basic service tier that the operator is required by federal or local law to carry, or, if a single-tier operator files for a rate adjustment based on a mid-year channel addition allowed under Section 76.922(e)(2)(iii)(C), the franchising authority has 60 days to review the requested rate. The proposed rate shall take effect at the end of this 60-day period unless the franchising authority rejects the proposed rate as unreasonable. In order to order refunds and prospective rate reductions, the franchising authority shall be subject to the requirements described in paragraph (g)(1) of this section.

(5) Notwithstanding the foregoing, when the franchising authority is regulating basic service tier rates, a cable operator may increase its rates for basic service to reflect the imposition of, or increase in, franchise fees upon 30 days' notice to subscribers and the franchising authority and, where required by Section 76.958, to the Commission. The increased rate attributable to Commission regulatory fees or franchise fees shall be subject to subsequent review and refund if the franchising authority determines that the increase in basic tier rates exceeds the increase in regulatory fees or in franchise fees allocable to the basic tier. This determination shall be appealable to the Commission pursuant to Section 76.944. When the Commission is regulating basic service tier rates pursuant to Section 76.945 or cable programming service rates pursuant to Section 76.960, an increase in those rates resulting from franchise fees or Commission regulatory fees shall be reviewed by the Commission pursuant to the mechanisms set forth in Section 76.945.

(h) If an operator files an FCC Form 1205 for the purpose of setting the rate for a new type of equipment under Section 76.923(o), the franchising authority has 60 days to review the requested rate. The proposed rate shall take effect at the end of this 60-day period unless the franchising authority rejects the proposed rate as unreasonable.

(1) If the operator's most recent rate filing was based on the system that enables them to file up to once per quarter found at Section 76.922(d), the franchising authority must issue an accounting order before the end of the 60-day period in order to order refunds and prospective rate reductions.

(2) If the operator's most recent rate filing was based on the annual rate system at Section 76.922(e), in order to order refunds and prospective rate reductions, the franchising authority shall be subject to the requirements described in paragraph (g)(1) of this section.

6. Section 76.934 is amended by revising paragraph (f) to read as follows:

§ 76.934 Small systems and small cable companies.

* * * * *

(f) *Small Systems Owned by Small Cable Companies.* Small systems owned by small cable companies shall have 90 days from their initial date of regulation on a tier to bring their rates for that tier into compliance with the requirements of Sections 76.922 and 76.923. Such systems shall have sixty days from the initial date of regulation to file FCC Forms 1200, 1205, 1210, 1211, 1215, 1220, 1225, 1230, and 1240 and any similar forms as appropriate. Rates established during the 90-day period shall not be subject to prior approval by franchising authorities or the Commission, but shall be subject to refund pursuant to sections 76.942 and 76.961.

* * * * *

7. Section 76.942 is amended by revising paragraph (f) to read as follows:

§ 76.942 Refunds.

* * * * *

(f) Once an operator has implemented a rate refund to subscribers in accordance with a refund order by the franchising authority (or the Commission, pursuant to paragraph (a) of this section), the franchising authority must return to the cable operator an amount equal to that portion of the franchise fee that was paid on the total amount of the refund to subscribers. The franchising authority must promptly return the franchise fee overcharge either in an immediate lump sum payment, or the cable operator may deduct it from the cable system's future franchise fee payments. The franchising authority has the discretion to determine a reasonable repayment period, but interest shall accrue on any outstanding portion of the franchise fee starting on the date the operator has

completed implementation of the refund order. In determining the amount of the refund, the franchise fee overcharge should be offset against franchise fees the operator holds on behalf of the franchising authority for lump sum payment. The interest rate on any refund owed to the operator presumptively shall be 11.25%.

8. Section 76.944 is amended by adding paragraph (c) as follows:

§ 76.944 Commission review of franchising authority decisions on rates for the basic service tier and associated equipment.

* * * * *

(c) An operator that uses the annual rate adjustment method under Section 76.922(e) may include in its next true up under Section 76.922(e)(3) any amounts to which the operator would have been entitled but for a franchising authority decision that is not upheld on appeal.

9. Section 76.957 is revised to read as follows:

§ 76.957 Commission adjudication of the complaint.

The Commission will consider the complaint and the cable operator's response and then determine by written decision whether the rate for the cable programming service or associated equipment is unreasonable or not. In making its determination, the Commission will only review the amount of the rate increase subject to the complaint. If the Commission determines that the rate change in question is unreasonable, it will grant the complaint and may order appropriate relief, including, but not limited to, prospective rate reductions and refunds. If it determines that the rate in question is reasonable, the Commission will deny the complaint.

10. Section 76.960 is revised to read as follows:

§ 76.960 Prospective rate reductions.

Upon a finding that a rate for cable programming service or associated equipment is unreasonable, the Commission may order the cable operator to implement a prospective rate reduction to the class of customers subscribing to the cable programming service at issue.

(a) For an operator that adjusts its rates using the quarterly rate adjustment system pursuant to Section 76.922(d), the Commission's decision regarding a prospective rate reduction shall remain binding on the cable operator for one year unless the Commission specifies otherwise.

(b) For an operator that adjusts its rates using the annual rate adjustment system pursuant to Section 76.922(e), for one year following the Commission's decision, the operator shall provide the Commission at least 30 days' notice of any proposed change.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1822

Acquisition Regulation; Approval of Contractor Overtime

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule amends NASA's acquisition regulation in order to authorize the Contracting Officer to approve contractor requests for overtime. This change will allow NASA to give approvals more quickly when overtime is needed.

EFFECTIVE DATE: October 5, 1995.

FOR FURTHER INFORMATION CONTACT: David K. Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Background

Under 48 CFR 1822.103–4, contractor requests for overtime are approved by the chief of the contracting office, or one level of supervision below. This change authorizes the contracting officer to approve overtime requests.

Impact

The rule was reviewed under the Regulatory Flexibility Act of 1980. NASA certifies that the rule will not have a significant economic impact on a substantial number of small entities. The rule imposes no paperwork burden subject to OMB review under the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1822

Government Procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR part 1822 is amended as follows:

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

1. The authority citation for 48 CFR Part 1822 continues to read as follows:

Authority: 42 U.S.C. 2473 (c)(1).

Subpart 1822.1—Basic Labor Policies

2. Section 1822.103–4 is revised to read as follows:

1822.103–4 Approvals.

The contracting officer is authorized to approve overtime premiums at Government expense. If two or more contracting offices have current contracts at a single facility and approval of overtime by one will affect the performance or cost of contracts of another, the approving contracting officer shall obtain the concurrence of affected contracting officers. If the approving contracting officer cannot obtain agreement within a reasonable time, a decision shall be obtained through the installation's normal management channels. In the absence of evidence to the contrary, a contracting officer may rely on the contractor's statement that approval will not affect performance or payments under any contract of another contracting office.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[I.D. 060995B]

Endangered and Threatened Wildlife; Revised Sea Turtle/Shrimp Fishery Emergency Response Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: General statement of policy; request for comments.

SUMMARY: NMFS has revised, and is publishing herein, the Sea Turtle/ Shrimp Fishery Emergency Response Plan (ERP) that describes NMFS' policy to ensure compliance with the sea turtle conservation regulations promulgated under the Endangered Species Act (ESA) and provides guidance for the use of future rulemaking in response to elevated sea turtle strandings associated with shrimping in the southeastern United States. The ERP has been revised in response to comments on the ERP and the receipt of new technical information. This notice contains a revised ERP in its entirety and invites public review and comment.

DATES: The revised ERP describes NMFS' policy effective October 4, 1995.

Comments will be accepted through December 4, 1995.

ADDRESSES: Comments on this notice should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813–570–5312, or Phil Williams, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

NMFS consults on shrimp fishing operations in the southeastern United States that may affect sea turtles listed as threatened or endangered, pursuant to section 7 of the ESA, 16 U.S.C. 1531 *et seq.* These shrimp fishing operations are managed, in part, under the Gulf of Mexico Shrimp Fishery Management Plan and the South Atlantic Shrimp Fishery Management Plan, both implemented pursuant to the Magnuson Fisheries Management and Conservation Act, 16 U.S.C. 1801 *et seq.*, and the Sea Turtle Conservation Regulations at 50 CFR part 227, subpart D, implemented under the ESA.

Unprecedented sea turtle stranding levels in Texas, Louisiana, and Georgia associated with shrimp fishing during 1994 resulted in a reinitiation of consultation pursuant to 50 CFR 402.16 on shrimp fishing in the southeastern United States. The resulting Biological Opinion (Opinion), issued on November 14, 1994, concluded that continued long-term operation of the fishery under the existing management regime was likely to jeopardize the continued existence of the Kemp's ridley population and prevent the recovery of loggerheads, but identified a reasonable and prudent alternative to allow the fishery to continue while avoiding jeopardy. One of the components of the alternative was to develop an ERP by March 14, 1995, to identify actions NMFS would take to ensure compliance with sea turtle conservation regulations. The ERP also provides internal guidance for the use of future rulemaking in response to elevated sea turtle strandings associated with shrimping in the southeastern United States.

On March 17, 1995, NMFS distributed the ERP widely among all concerned parties, including shrimp industry and environmental organizations for their information and comment. In addition, formal notice of availability for the ERP was published on April 21, 1995 (60 FR 19885).

ERP Implementation and Recent Events

The guidelines in the ERP have been used by NMFS throughout the 1995 shrimping season for its stranding reporting and public notification procedures, for its enforcement efforts, and for the scope, timing and structure of its temporary restrictions on shrimp fishing. While the ERP has served to guide NMFS and apprise the public of when and how restrictions may be imposed by NMFS, justification for these restrictions and changes thereto have been provided concurrently with the restrictions themselves. Any deviations from the ERP guidelines, and the relationship to the ERP, have also been explained with the restrictions.

Temporary requirements were placed on shrimp trawling in nearshore waters along two sections of the Texas and Louisiana coast on April 30, 1995 (60 FR 21741, May 3, 1995), on the Georgia coast on June 21, 1995 (60 FR 32121, June 20, 1995), and on the Georgia and the southern portion of the South Carolina coast on August 11, 1995 (60 FR 42809, August 17, 1995) to conserve sea turtles, especially the endangered Kemp's ridley. These requirements were necessitated by the continued high rates of sea turtle strandings occurring in these areas along with documented shrimping effort. A complete description of the sea turtle stranding events, temporary requirements, and the areas in which they have applied is provided in the temporary requirements (60 FR 21741, May 3, 1995, 60 FR 32121, June 20, 1995, 60 FR 42809, August 17, 1995), and is not repeated here.

In all cases, strandings decreased in those areas where temporary requirements were imposed, indicating that the measures identified in the ERP have been successful at reducing high stranding levels. This is further evidenced by the contrast in the number of Kemp's ridley strandings that occurred on Texas offshore beaches in 1994 and 1995. In the entire state, 48 Kemp's ridleys stranded in April 1995 prior to the implementation of emergency rulemaking, corresponding closely with the 50 ridley strandings reported in Texas during April in 1994. The emergency gear restrictions effective April 30, 1995 were implemented in areas where 42 of these strandings occurred. Although ridley strandings increased drastically to 71 sea turtles during May of 1994, during May of 1995 there were only 17 ridley strandings, despite the slightly later start to the Texas closure (May 15, 1995 versus May 13, 1994). This contrast between years illustrates the effectiveness of the emergency restriction in arresting ridley mortalities. The decline in mortalities, whether due to the gear modifications and improved turtle exclusion, or to reduced shrimping effort in areas of ridley abundance due to shrimpers leaving the affected areas, was consistent with the intent of the ERP. Implementation of restrictions at other times and in other zones have similarly reduced sea turtle strandings, demonstrating the effectiveness of certain gear restrictions. Cumulative strandings of Kemp's ridleys are considerably lower than 1994. While overall cumulative strandings of all species of sea turtles have been relatively high in 1995, not all of these strandings appear to be the result of shrimp fishing, and further appear to occur over the course of the season rather than episodically. These issues are being considered in additional rulemaking as announced in the Advance Notice of Proposed Rulemaking (ANPR) published on September 13 (60 FR 47544). Through the ANPR, NMFS announced that it is considering proposing regulations that would identify special sea turtle management areas in the southeastern Atlantic and Gulf of Mexico and impose additional conservation measures to protect sea turtles in these areas. Comments received on the ANPR and the revised ERP will be considered in future rulemaking.

Comments on the March 14, 1995 ERP and Temporary Requirements

Since the publication of the ERP and the implementation of temporary requirements referenced above, NMFS has received numerous written comments and has also met with interested constituents to receive oral comments. Some comments were addressed through the temporary requirements cited in the previous section, but are again discussed here in order to present a complete record for decisions relating to the ERP.

Comment. Individual shrimpers and the Texas Seafood Processors Association stated that the prohibition on all try nets without turtle excluder devices (TEDs) is unreasonable for those using small try nets.

Response. NMFS determined that an alternative existed to the try net prohibition that would allow fishermen to work efficiently, while reducing the likelihood of turtle entrapment. Accordingly, NMFS modified the temporary requirements to allow the use of try nets without TEDs installed if the try nets were smaller than 12 feet (3.6 m) in headrope length and 15 feet (4.6

m) in footrope length, effective May 12, 1995 (60 FR 26691, May 18, 1995). While this modification has been made in all temporary restrictions, the ERP is now being revised as well to reflect this change.

Comment. The requirement to use a shortened flap over the escape opening results in excessive shrimp loss.

Response. NMFS gear experts conducted underwater investigations on a top-opening hard TED with a shortened webbing flap and determined that it would not result in any significant shrimp loss. Furthermore, shrimp retention in TED-equipped nets can be maximized by use of an accelerator funnel which helps propel shrimp through TED grids and away from the turtle escape opening. However, NMFS has received numerous complaints from the shrimp industry about perceived loss of shrimp. Further, unlike 1994, NMFS has documented a high compliance rate with gear requirements, and therefore, believes that the shortened flap requirement should be re-evaluated on a case by case basis, but retains the shortened webbing flap requirement as part of the potential restrictive measures under the ERP.

Comment. The Texas Shrimp Association (TSA) and the National Fisheries Institute (NFI) objected to the manner in which NMFS prepared and implemented the ERP. NFI and TSA asserted that the process of preparation precluded meaningful industry participation, circumvented requirements under the Administrative Procedure Act, and imposed TED use restrictions without adequate time for shrimpers to adjust. TSA proposed an alternative to the ERP to limit inshore and nearshore fishing activity, with the stated objective of relieving pressure from incidental capture in areas where turtles are concentrated.

Response. The ERP was required by the November 14, 1994 Opinion in order to ensure that sea turtle mortalities attributable to shrimp fishing were not likely to jeopardize the species. The Opinion required that the ERP be developed by March 14, 1995, in order that NMFS have time to compile and analyze historic stranding data and still have a plan prior to the start of the 1995 shrimping season. The ERP does not modify the existing sea turtle conservation regulations nor does it have any binding effect on the public. The existing regulations already provide authority for emergency temporary action (such as TED use restrictions) to prevent unauthorized takings of sea turtles. The temporary restrictions implemented this season were based on the authority of 50 CFR 227.72(e)(6), and justification for these actions were contained in the record for each one. The ERP simply provides guidance on when and how NMFS will exercise its discretion in implementing such temporary measures under this existing regulatory authority. The ERP was widely distributed upon its completion in March and is published herein in its entirety for public review and comment. The TSA alternative proposal to limit inshore and nearshore fishing activity to protect turtles, if implemented, would involve major changes to current conservation measures and would be subject to the rulemaking process. TSA has submitted its proposal as a petition for rulemaking under the APA, and NMFS is reviewing this petition in the context of an ANPR (60 FR 47544, September 13, 1995).

Comment. The Georgia Fisherman's Association (GFA) objected to the temporary restrictions in Georgia, particularly the prohibition on the use of bottom-shooting, hard TEDs and requested NMFS to rescind this restriction. The Sea Turtle Restoration Project of Earth Island Institute (EII) and NFI also urged NMFS to modify its temporary restriction as requested by GFA. GFA asserted that shrimpers were having problems with top-shooting hard TEDs because they lose shrimp, gather debris, are less effective at excluding turtles, and they twist and roll when installed with floats.

NMFS has also received verbal reports from Georgia fishermen that debris accumulates in the top-opening TEDs, thus hindering the release of turtles. GFA agreed that the banning of soft TEDs was warranted as they are not as effective as hard TEDs, but GFA stated that the simultaneous ban on soft TEDs and bottom-opening hard TEDs would make analysis of the relative contributions of the two gear types to sea turtle mortality and strandings impossible.

Response. Fishermen in the Atlantic have generally not used top-opening hard TEDs in recent years and may be having particular difficulty adapting to a new gear type. NMFS has investigated shrimpers' complaints and has had gear specialists working with Georgia shrimpers during the imposition of the temporary restrictions.

Gear specialists have been able to resolve problems associated with switching hard TEDs from bottom-opening to top-opening and in the installation of flotation devices to prevent nets from twisting. No problems with clogged top-opening TEDs which would trap sea turtles have been observed. NMFS specialists have also noted that as shrimpers become familiar with the gear changes they can fish effectively. In spite of the ability of NMFS gear specialists to resolve the alleged problems with top-opening hard TEDs experienced by individual shrimp fishermen in Georgia, NMFS has continued to receive complaints on the temporary prohibition of the use of bottom-opening hard TEDs, the strongly preferred gear choice for many Georgia fishermen.

A preliminary analysis of recent strandings and compliance rates following the July 15, 1995 opening of Texas offshore waters to shrimping indicates that strandings were highest in areas where the use of soft TEDs was prevalent. In two areas in Texas where strandings were low, no difference in stranding rates could be distinguished based on the differing proportions of the fleet using top- versus bottom-opening hard TEDs. Although other factors, particularly the distribution of shrimping effort, may have contributed to the observed stranding patterns in Texas, the data suggested that prohibiting the use of soft TEDs would provide more effective protection for sea turtles than prohibiting the use of bottom-opening hard TEDs. Therefore, NMFS implemented only the soft TED and try net restrictions described in the ERP in Georgia and South Carolina in response to elevated sea turtle strandings (60 FR 42809, August 17, 1995). This approach was intended to protect sea turtles and to help determine the effectiveness of each restriction. However, strandings in waters off Georgia and South Carolina in the week following the implementation of these restrictions, met or exceeded the indicated incidental take levels (ITLs) established for those areas. Consequently, NMFS is re-evaluating its recent restrictions and may prohibit the use of bottom-opening hard TEDs and require the use of shortened webbing flaps over escape openings should high levels of strandings continue in these areas.

Comment. The National Biological Survey (NBS), U.S. Department of the Interior, recommended that shrimp statistical Zone 21 be included in the interim special management area. NBS stated that a review of the stranding database shows that this area documents larger than average Kemp's ridley strandings when compared to the upper Texas Coast or Louisiana. NBS also asserted that Zone 21 was difficult to survey and therefore, strandings may go undocumented. NBS felt that the additional two weeks that would be required to implement restrictions in Zone 21 may jeopardize the survival of the Kemp's ridley.

Response. NMFS is investigating, as a requirement of the November 14, 1994 Opinion, which areas should require special management considerations, due to high turtle abundance or important nesting or foraging habitats. Upon identification of such areas, NMFS will propose management measures to mitigate the effects of intensive shrimping pulses.

Comment. The Center for Marine Conservation (CMC), EII, and the Houston Audubon Society and Help Endangered Animals-Ridley Turtles (HEART) supported in general the temporary conservation requirements to reduce turtle strandings as a reasonable compromise that allows shrimping to continue in a manner that is compatible with turtle conservation. However, EII felt that the ERP, in general, was too weak to provide for strong and clear trigger mechanisms that would prevent 1994's high level of strandings. EII asserted that the accuracy of the indicated take levels (ITLs) established in the ERP were questionable. While recognizing the difficulty of accurately determining stranding levels in inshore waters, CMC noted that these waters are very important to turtles and urged that the temporary restrictions be imposed as necessary. HEART urged that the temporary restrictions be made permanent, describing a number of gear problems associated with soft TEDs, bottom-shooting TEDs and try nets. CMC and EII noted (as did NBS in the previous comment) that a 3–4 week waiting period to implement area closures is unacceptable for the Kemp's ridley; that it cannot tolerate another mass mortality event such as occurred in 1994. EII urged that NMFS issue a regulation that automatically implements gear restrictions or closures. Finally, CMC and EII urged that sufficient resources be devoted to monitor strandings, especially in Louisiana, where monitoring has been inadequate, but where fishing activity may have shifted with area gear restrictions in Texas.

Response. NMFS recently published an ANPR (60 FR 47544, September 13, 1995) to consider rulemaking identifying which areas should require special management considerations, due to high turtle abundance or important nesting or foraging habitats. Upon identification of such areas, NMFS will propose permanent management measures to mitigate the effects of intensive shrimping pulses. This action could also include bays and estuaries that are important to turtles and shrimping. Also, NMFS is considering, as a separate rulemaking, whether to propose severe restrictions on the use of soft TEDs, which have been repeatedly implicated as being ineffective at excluding turtles, often because of poor installation or maintenance.

The ERP was designed to, among other things, identify NMFS plans to respond to high sea turtle strandings during 1995 through emergency rulemaking. A permanent management regime will be put forth as a proposed rule and the public provided ample opportunity for comment. Many elements of the ERP may be superseded once permanent rules are in place, by the 1996 shrimping season. The ERP is based on the best available scientific information gained through recent gear trials, the scientific literature on sea turtle biology and extensive discussions with gear and turtle scientists. In addition, the ERP (including the identified restrictions, and the indicated take levels) was presented at meetings with scientists and industry and comments were received.

However, the NMFS Opinion issued on November 14, 1994 calls for an Expert Working Group (EWG) to be convened to identify the level of mortality that can be sustained by sea turtle populations, to determine the level of mortality reflected by strandings, and to identify an acceptable stranding level. NMFS convened the EWG in Miami June 26–28, 1995 to review the Opinion and available data bases including those upon which the Opinion and the ERP are based. This expert working group consisted of sea turtle population biologists and life history experts including experts nominated by the shrimp industry and environmental community. As a result of this initial meeting, NMFS is completing additional data analyses which will be reviewed by the EWG in the next scheduled meeting in November.

In addition, because of concerns expressed by some in industry and the environmental community, NMFS has undertaken an extensive technical review of the stranding triggers in the ERP. This review is planned to be completed in the next several weeks and NMFS plans to review its results with representatives of the shrimp industry and environmental community. If these analyses result in new trigger numbers, they will be included in subsequent publications of the revised ERP for public review.

NMFS is also concerned that strandings be monitored accurately and comprehensively both on inshore and offshore facing beaches. NMFS increased its support for the monitoring of strandings, including in Louisiana, where there had previously been little or no coverage.

Revision of the Emergency Response Plan

NMFS continues to review the ERP and has revised it as a result of public comments received and new technical information obtained. The ITLs, which were not available when the ERP was adopted in March, are published as part of the revised ERP. This ERP is NMFS' policy to ensure compliance with sea turtle conservation regulations and to respond to sea turtle stranding events. The revised ERP, in its entirety, follows.

The Sea Turtle/Shrimp Fishery Emergency Response Plan

In developing this ERP, NMFS reviewed stranding data, as well as other information, that resulted in identification of certain areas that NMFS believes provide important habitat for Kemp's ridleys, and that, as part of the ERP, will be subject to continuous elevated scrutiny. These areas are identified in the ERP, and will allow NMFS to more efficiently conduct its enforcement operations under this plan. Identification of these areas in the ERP does not foreclose nor prejudge the identification of areas requiring special sea turtle management considerations, required as one of the components of the reasonable and prudent alternative within one year of the date of issuance of the Opinion, which will be subject to rulemaking procedures, including prior notice and opportunity to comment. Other activities within the special management areas, including hopper dredging, oil and gas activities, permitted power boat races, military operations and federally managed fisheries, are reviewed via the section 7 process of the ESA, but may also be reviewed during these rulemaking procedures, as necessary.

Indicated Take Levels

The Opinion is accompanied by an incidental take statement, pursuant to section 7(b)(4)(i) of the ESA, that specifies the impact of incidental taking on the species. The incidental take statement provides two levels to identify the expected incidental take of sea turtles by shrimp fishing. The incidental take levels are based upon either documented takes or indicated takes measured by stranding data. Stranding data are considered an indicator of lethal take in the shrimp fishery during periods in which intensive shrimping effort occurs and there are no significant or intervening natural or human sources of mortality other than shrimping conclusively

identified as the cause of strandings. While actual strandings in any zone in any week may meet or exceed the levels identified as the indicated take levels, this does not necessarily mean that the incidental take level for the shrimp fishery has been met or exceeded for purposes of section 7 of the ESA and that consultation is required to be reinstated pursuant to 50 CFR 402.16. Rather, NMFS must consider whether there are other natural or human sources of mortality other than shrimping that can be conclusively identified; strandings as a result of such sources will not be used in calculating whether the incidental take level for the shrimp fishery has been met or exceeded.

NMFS has established ITLs by identifying the weekly average number of sea turtle strandings documented in each NMFS statistical zone for the last 3 years, 1992–94, while special consideration was given for anomalous years. In Texas, Louisiana, and Georgia, where strandings were anomalously high in 1994, the years 1991–93 were used to determine historical levels. In addition, the 1993 strandings of over 100 small Kemp's ridleys in a small section of Louisiana have been excluded from the averages due to the anomalous nature of that event. The weekly average was computed as a 5-week running average (2 weeks before and after the week in question) to reflect seasonally fluctuating events such as fishery openings and closures and turtle migrations. The ITL for each zone was set at 2 times the weekly 3-year stranding average. For weeks and zones where the historical average is less than one, the ITL has been set at two strandings. Table 1 contains the ITLs for each week and statistical zone, except for Zones 1–3, 6–17, 21, and 24, because the ITL is 2 for all weeks in these zones (note: there is no Zone 22 or 23).

Stranding Notification Procedures

Sea Turtle stranding information is reported to the NMFS National Stranding Coordinator by the Sea Turtle Stranding and Salvage Network (STSSN). During 1995, STSSN State Coordinators submit weekly reports and contact the STSSN National Coordinator immediately if strandings approach or exceed historical averages. The STSSN National Coordinator will contact NMFS Southeast Regional Office, Protected Species Branch, and the NMFS National Sea Turtle Coordinator (NSTC) upon receipt and evaluation of information suggesting that strandings are elevated to near historical levels. The STSSN National Coordinator will be responsible for forwarding information regarding the strandings to the NMFS Southeast Regional Office.

This early notification by STSSN State Coordinators will not necessarily initiate management actions, but will serve as notification that stranding levels are approaching levels that may require implementation of management measures in the ERP. Implementation of the ERP is defined below under A for interim special management areas and B for areas outside of the interim special management areas.

Public Notification Procedures

Summaries of stranding reports, enforcement activities and other activities implementing the requirements of the November 14, 1994 BO will continue to be forwarded regularly via fax to NMFS laboratories, port samplers and enforcement agents, Coast Guard Districts, state fishery agencies, STSSN State Coordinators, Sea Grant agents, and industry and environmental organizations. Additionally, any emergency rulemaking will be announced through press releases and will be broadcast on the NOAA Weather Radio, immediately upon filing of the regulation for public inspection at the Office of the Federal Register.

Emergency Response Plan (ERP) Procedures

A. Interim Special Management Areas

Data collected by the STSSN provide information regarding the species composition, nearshore distribution, and mortality of sea turtles. Stranding data illustrated by statistical zones identify two areas of historically high Kemp's ridley strandings including much of Texas and Louisiana, and the coast of Georgia and northeast Florida. Although few strandings have been reported in statistical zones of low STSSN effort in Louisiana, in-water research, including telemetry and mark/recapture efforts, and historical data, have illustrated the importance of Louisiana waters (as well as those of Texas) as Kemp's ridley habitat.

Historical stranding levels indicate that NMFS can anticipate elevated Kemp's ridley strandings within these two areas. These areas therefore require elevated scrutiny and protection under this Plan to reduce the impacts of the shrimp fishery on Kemp's ridleys. The Northern Gulf Interim Special Management Area includes waters off Louisiana and Texas seaward of the COLREGS line within NMFS statistical zones from (and including) Zone 13 through Zone 20 out to 10 nautical miles (nm) (18.5 km). The Atlantic Interim Special Management Area includes waters off Georgia and northeast Florida seaward of the COLREGS line within NMFS statistical Zones 30 and 31 out to 10 nm (18.5 km).

Through the section 7 consultation process, other activities within the special management areas are also being reviewed, including hopper dredging, oil and gas activities, permitted power boat races, military operations and federally managed fisheries. During 1995, observers will be deployed during these activities as needed.

Elevated Enforcement Within the Interim Special Management Areas

In 1995, from April 1 through November 30, members of a trained TED law enforcement team will coordinate with the Coast Guard, local NMFS and state enforcement agents to investigate compliance with TED regulations in the Interim Special Management Areas. Throughout this period, members of the TED law enforcement team (in addition to local NMFS enforcement personnel) will be deployed in the Interim Special Management Areas, including at least one in the Atlantic Interim Special Management area.

Implementation of Emergency Rules Within the Special Management Areas

Reports of elevated stranding levels, as described below, in any statistical zone within the Interim Special Management Areas may result in implementation of emergency rulemaking for the NMFS statistical zone of elevated strandings, and contiguous statistical zones or portions of contiguous statistical zones, as necessary. The precise geographic scope of the area requiring such measures will be defined in the rule. Within the Interim Special Management Areas, regulations restricting shrimping will be implemented when 75 percent or more of the weekly ITL is reached for 2 consecutive weeks, or when the Assistant Administrator for Fisheries, NOAA (AA), in consultation with the Director, Southeast Region, NMFS (Regional Director), the Southeast Enforcement Division Special Agent in Charge (SAC), the Southeast General Counsel Senior Enforcement Attorney (SEA) and the Protected Resources Office Director (OD), determines that other factors including noncompliance or high nearshore shrimping effort require additional management measures. Any restrictions necessary within the Interim Special Management Areas will result in emergency rulemaking pursuant to the regulations under 50 CFR 227.72(e)(6). Justification for the rulemaking will be included in

the Federal Register notice, and will include the best readily available information on:

a. Affected area;

b. Current and historical strandings, shrimp landings and shrimping effort (if available). Any unusual aspect of the strandings will be identified (e.g., species composition, size classes, and carcass anomalies);

c. Enforcement efforts with emphasis on boardings and compliance;

d. Other mortality factors if any, and unusual environmental conditions, with an evaluation of their significance; and

e. Any fishing practices or gear types that may be contributing to the strandings (e.g., percent soft TEDs as determined from enforcement boardings).

Restrictions on the fishery will include any or all of the following:

1. The use of soft TEDs described in 50 CFR is prohibited.

2. The use of hard TEDs with bottom escape openings and special hard TEDs with bottom escape openings is prohibited. Approved hard TEDs and special hard TEDs must be configured with the slope of the deflector bars upward from forward to aft and with the escape opening at the top of the trawl.

3. The use of try nets with a headrope length greater than 12 ft (3.6 m) or a footrope length greater than 15 ft (4.6 m) is prohibited unless a NMFS-approved top-opening, hard TED or special hard TED is installed when the try nets are rigged for fishing. Try nets with a headrope length 12 ft (3.6 m) or less and a footrope length 15 ft (4.6 m) or less would be exempt from the TED-use requirement in accordance with 50 CFR 227.72 (e)(2)(ii)(B)(*1*).

4. The use of a webbing flap that completely covers the escape opening in the trawl is prohibited. Any webbing that is attached to the trawl, forward of the escape opening, be cut to such a length that the trailing edge of such webbing does not approach to within 2 inches (5.1 cm) of the posterior edge of the TED grid. The requirements for the size of the escape opening would be unchanged.

These restrictions will be implemented through emergency rulemaking pursuant to the regulations under 50 CFR 227.72(e)(6), and will remain in effect for 30 days. Changes to the restrictions, or to the size and extent of the area covered by the restrictions, and any extension of the restrictions may be required through additional 30-day rules. All restrictions will be predicated on ensuring protection to sea turtles.

Area Closures Within the Special Management Areas

Two consecutive weeks of elevated strandings, at 75 percent or more of the ITL after implementation of an emergency rule restricting shrimp fishing, will result in area closures from the COLREGS line, out to 10 nm (18.5 km) within the statistical zone of elevated strandings, and contiguous statistical zones or portions of contiguous zones, as necessary. Area closures will be implemented through emergency rulemaking notices pursuant to 50 CFR 227.72(e)(6), and will remain in effect for 30 days. Changes to the size and extent of the area closure, and any extension of the closure, may be required through additional 30-day rules.

Decision Not to Implement Restriction or Closures Within Special Management Areas

The Regional Director, in consultation with the SAC, SEA, and the OD, may make a determination that emergency rulemaking is not necessary despite stranding levels reaching or exceeding 75 percent of the ITL for 2 consecutive weeks within the Interim Special Management Areas. This determination will be summarized in a Memorandum for the Record, and must receive the concurrence of the AA. The Memorandum for the Record will include the information listed in a. through e., above, must demonstrate that sea turtle mortalities appear to be due to sources other than shrimping, and must identify actions that can be taken immediately to reduce nearshore mortalities.

B. Areas Outside of the Interim Special Management Areas

(Zones 1 through 11, 21 through 29, and 32 through 36)

The STSSN National Coordinator, with assistance from PSB staff and the NSTC as requested, will be responsible for communicating with the STSSN State Coordinators to evaluate local conditions and mortality factors present in the statistical zones of elevated strandings. The best available information will be solicited and reviewed through communication with appropriate NMFS laboratories as well as state and local marine scientists and managers. The local NMFS enforcement agent, Coast Guard and state enforcement agency may also be asked to increase enforcement efforts within statistical zones of elevated strandings.

A consensus Decision Memorandum to the RD will be prepared by PSB staff, the STSSN National Coordinator, and the NSTC regarding whether further action is warranted in any statistical zone within which strandings remain elevated above historical levels for 1 month. The Decision Memorandum must be timely and contain the following best readily available information:

a. Affected area;

b. Current and historical strandings, shrimp landings and shrimping effort (if available). Any unusual aspect of the strandings will be identified (e.g., species composition, size classes, and carcass anomalies);

c. Enforcement efforts with emphasis on boardings and compliance;

d. Other mortality factors if any, and unusual environmental conditions, with an evaluation of their significance;

e. Identification of any fishing practices or gear types that may be contributing to the strandings (for e.g., percent soft TEDs as determined from enforcement boardings); and

f. Recommended further actions, if any, which may include continued investigation, elevated enforcement, or implementation of emergency regulations restricting shrimping or closing areas. Restrictions if necessary, will be consistent with those described within the discussion of the interim special management areas under A., above.

The Regional Director, in consultation with the SAC, SEA, and the OD, will make a determination regarding further action within 48 hours of receipt of the Decision Memorandum. Actions contrary to those recommended in the Decision Memorandum must be summarized in a Memorandum for the Record, and receive the concurrence of the AA. Continued elevated strandings reaching or exceeding 75 percent of the ITL for more than 2 consecutive weeks after restrictions are taken, as noted in item f. under B. and listed in A., may result in area closures from the COLREGS line, out to 10 nm (18.5 km) within the statistical zone of elevated strandings, and contiguous zones or portions of contiguous zones, as necessary.

Request for Comments

Any emergency rulemaking that may be necessary to implement the ERP will be implemented pursuant to 50 CFR 227.72(e)(6) and the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* Since NMFS received comments on the rule establishing 50 CFR 227.72(e)(6) in 1992, and since full opportunity for public comment may not exist if temporary restrictions must be implemented on an emergency basis, NMFS is requesting comments on this

revised ERP. NMFS will evaluate all comments received and will consider making additional revisions to the ERP to incorporate public comments.

Furthermore, the Opinion requires a number of other management initiatives. In fulfilling one of these requirements, a rule is being prepared to establish special sea turtle management areas and/or contingency restrictions to the shrimp fishery (60 FR 47544, September 13, 1995). Such rulemaking will be done through normal rulemaking procedures, including publication of a proposed rule with a public comment period and, as appropriate, public hearings, prior to publication of a final rule with a delayed effective date. Public comments which provide alternative management measures for ensuring successful operation of the shrimp trawl fishery while promoting recovery of sea turtle populations may be used in the development of a proposed rule. Such comments are therefore specifically solicited. All comments received on this ERP will also be considered during that rulemaking.

Dated: September 26, 1995.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

APPENDIX TO STATEMENT OF POLICY—TABLES

TABLE 1.—SEA TURTLE INDICATED TAKE LEVEL (ITL) FOR SHRIMP FISHERY STATISTICAL ZONES

[Zones 1–3, 6–17, 21, and 24 are not included in the table because the ITL is 2 for all weeks in these Zones. There is no Zone 22 or 23.]

Gulf of Mexico		Zone 4	Zone 5	Zone 18	Zone 19	Zone 20	Zone 25	Zone 26	Zone 27	Zone 28
Week	Week period	ITL	ITL	ITL	ITL	ITL	ITL	ITL	ITL	ITL
1	1/1–1/7	2	2	2	2	2	2	2	3	2
2	1/8–1/14	2	2	2	2	2	2	2	4	2
3	1/15–1/21	2	2	2	2	2	2	2	4	2
4	1/22–1/28	2	2	2	2	2	2	2	5	2
5	1/29–2/4	2	2	2	2	2	2	2	5	2
6	2/5–2/11	2	2	2	2	2	2	2	6	3
7	2/12–2/18	2	2	2	2	2	2	2	5	3
8	2/19–2/25	2	2	2	2	2	2	2	4	3
9	2/26–3/4	2	2	2	2	2	2	3	5	2
10	3/5–3/11	2	2	2	2	2	2	3	5	3
11	3/12–3/18	2	2	2	2	2	2	3	4	3
12	3/19–3/25	2	3	2	2	3	2	3	5	3
13	3/26–4/1	2	2	2	2	3	2	3	6	5
14	4/2–4/8	2	2	2	2	3	2	3	5	6
15	4/9–4/15	2	2	2	2	4	2	2	5	6
16	4/16–4/22	2	2	3	2	4	2	3	6	6
17	4/23–4/29	2	3	3	2	4	2	4	7	6
18	4/30–5/6	3	3	4	2	3	2	4	7	5
19	5/7–5/13	3	3	3	2	3	2	4	7	6
20	5/14–5/20	3	4	2	2	2	2	5	7	6
21	5/21–5/27	3	3	2	2	2	2	6	7	5
22	5/28–6/3	3	2	2	2	2	3	5	6	7
23	6/4–6/10	2	2	2	2	2	2	5	5	7
24	6/11–6/17	3	2	2	2	2	2	5	5	6
25	6/18–6/24	3	2	2	2	2	2	5	5	5
26	6/25–7/1	2	2	3	2	2	2	5	4	5
27	7/2–7/8	2	2	3	3	2	2	5	4	4
28	7/9–7/15	2	2	3	3	2	2	5	4	3
29	7/16–7/22	2	2	3	3	2	2	5	5	4
30	7/23–7/29	2	2	4	4	2	2	4	4	5
31	7/30–8/5	2	2	3	2	2	2	3	4	5
32	8/6–8/12	2	2	2	2	2	2	4	4	4
33	8/13–8/19	2	2	2	2	2	2	3	4	4
34	8/20–8/26	2	2	3	2	2	2	3	3	4
35	8/27–9/2	2	2	3	2	2	2	3	4	4
36	9/3–9/9	2	2	3	2	2	2	3	4	4
37	9/10–9/16	2	2	4	2	2	2	2	4	4
38	9/17–9/23	2	2	4	2	2	2	2	4	4
39	9/24–9/30	2	2	4	2	2	2	2	4	4
40	10/1–10/7	2	2	4	2	2	2	2	3	3
41	10/8–10/14	2	2	3	2	2	2	2	2	3
42	10/15–10/21	2	2	2	2	2	2	2	2	3
43	10/22–10/28	2	2	2	2	2	2	2	2	3
44	10/29–11/4	2	2	2	2	2	2	2	2	2
45	11/5–11/11	2	2	2	2	2	2	2	2	2
46	11/12–11/18	2	2	2	2	2	2	2	2	2
47	11/19–11/25	2	2	2	2	2	2	2	2	2
48	11/26–12/2	2	2	2	2	2	2	2	2	2
49	12/3–12/9	2	2	2	2	2	2	2	2	2
50	12/10–12/16	2	2	2	2	2	2	2	2	2
51	12/17–12/23	2	2	2	2	2	2	2	2	2
52	12/24–12/31	2	2	2	2	2	2	2	3	2

Table 1.—SEA TURTLE INDICATED TAKE LEVEL (ITL) FOR SHRIMP FISHERY STATISTICAL ZONES

[Zones 1–3, 6–17, 21, and 24 are not included in the table because the ITL is 2 for all weeks in these Zones. There is no Zone 22 or 23.]

Southeast Atlantic		Zone 29	Zone 30	Zone 31	Zone 32	Zone 33	Zone 34	Zone 35	Zone 36
Week	Week Period	ITL	ITL	ITL	ITL	ITL	ITL	ITL	ITL
1	1/1–1/7	2	2	2	2	2	2	2	2
2	1/8–1/14	2	2	2	2	2	2	2	2
3	1/15–1/21	2	2	2	2	2	2	2	2
4	1/22–1/28	2	2	2	2	2	2	2	2
5	1/29–2/4	2	2	2	2	2	2	2	2
6	2/5–2/11	2	2	2	2	2	2	2	2
7	2/12–2/18	2	2	2	2	2	2	2	2
8	2/19–2/25	2	2	2	2	2	2	2	2
9	2/26–3/4	2	2	2	2	2	2	2	2
10	3/5–3/11	2	2	2	2	2	2	2	2
11	3/12–3/18	2	2	2	2	2	2	2	2
12	3/19–3/25	2	2	2	2	2	2	2	2
13	3/26–4/1	4	2	2	2	2	2	2	2
14	4/2–4/8	5	3	2	2	2	2	2	2
15	4/9–4/15	5	5	2	2	2	2	2	2
16	4/16–4/22	5	5	2	2	2	2	2	2
17	4/23–4/29	5	6	3	3	2	3	2	2
18	4/30–5/6	5	9	5	3	3	3	2	2
19	5/7–5/13	4	11	7	5	4	3	2	2
20	5/14–5/20	4	11	7	6	4	5	3	2
21	5/21–5/27	4	11	8	8	4	5	4	2
22	5/28–6/3	4	11	8	8	4	5	4	2
23	6/4–6/10	4	9	7	9	4	7	5	2
24	6/11–6/17	3	8	6	8	4	7	5	2
25	6/18–6/24	2	7	6	7	5	6	3	2
26	6/25–7/1	2	6	6	6	6	6	2	2
27	7/2–7/8	2	7	5	5	7	6	2	2
28	7/9–7/15	2	8	6	4	9	4	2	2
29	7/16–7/22	2	7	5	4	9	4	2	2
30	7/23–7/29	3	8	5	4	8	3	2	2
31	7/30–8/5	3	9	4	3	7	2	2	2
32	8/6–8/12	4	7	4	3	5	2	2	2
33	8/13–8/19	4	6	5	3	4	2	2	2
34	8/20–8/26	3	7	6	3	3	2	2	2
35	8/27–9/2	3	7	5	4	3	2	2	2
36	9/3–9/9	2	6	5	4	3	2	2	2
37	9/10–9/16	2	5	5	3	4	2	2	2
38	9/17–9/23	2	4	3	2	3	2	2	2
39	9/24–9/30	2	2	2	2	3	2	2	2
40	10/1–10/7	2	2	2	2	2	2	2	2
41	10/8–10/14	2	2	2	2	2	2	2	2
42	10/15–10/21	2	2	2	2	2	3	4	4
43	10/22–10/28	2	2	2	2	2	4	5	4
44	10/29–11/4	3	2	2	2	2	4	7	4
45	11/5–11/11	3	2	2	2	2	4	11	4
46	11/12–11/18	3	2	2	2	2	4	11	4
47	11/19–11/25	2	2	2	2	2	3	10	2
48	11/26–12/2	2	2	2	2	2	2	9	2
49	12/3–12/9	2	2	2	2	2	2	6	2
50	12/10–12/16	2	2	2	2	2	2	2	2
51	12/17–12/23	2	2	2	2	2	2	2	2
52	12/24–12/31	2	2	2	2	2	2	2	2

[FR Doc. 95–24608 Filed 10–4–95; 8:45 am]

BILLING CODE 3510–22–W

50 CFR Part 672

[Docket No. 950509041–5041–01; I.D. 100295A]

Groundfish of the Gulf of Alaska; Pollock in Statistical Area 62 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of closure.

SUMMARY: NMFS is changing the date on which directed fishing for pollock is prohibited in Statistical Area 62 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the fourth quarterly allowance of total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 2, 1995, until 12 midnight, A.l.t, December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The 1995 pollock TAC in Statistical Area 62 was established by the final 1995 harvest specifications of groundfish (60 FR 8470, February 14, 1995) as 15,310 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv). As of September 16, 1995, the remaining pollock TAC for Statistical Area 62 is 3,079 mt.

NMFS announced a prohibition of directed fishing for pollock in Statistical Area 62 effective 12 noon, Alaska local time (A.l.t.), October 4, 1995, until 12 midnight, A.l.t, December 31, 1995 (60 FR 50503, September 29, 1995). Current information shows the catching capacity of vessels catching pollock for processing by the inshore component is capable of exceeding the remaining TAC in Statistical Area 62 by more than 2,000 mt.

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(2)(ii), that the 1995 fourth quarterly allowance of pollock TAC in Statistical Area 62 will be taken by 12 noon, Alaska local time (A.l.t.), October 2, 1995. Therefore, the Regional Director is terminating the previous closure at 60 FR 50503. The Regional Director has established a directed fishing allowance of 2,679 mt after determining that 400 mt will be taken as incidental catch in directed fishing for other species in Statistical Area 62 of the GOA. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 62 effective 12 noon, Alaska local time (A.l.t.), October 2, 1995.

After the effective date of this closure the maximum retainable bycatch amounts at § 672.20(g) apply at any time during a trip.

Classification

This action is taken under § 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 2, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–24784 Filed 10–2–95; 1:06 pm]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 092895A]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Cod in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Allocation.

SUMMARY: NMFS is reallocating Pacific cod from vessels using jig gear to vessels using hook-and-line or pot gear and trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to promote the goals and objectives of the North Pacific Fishery Management Council.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 4, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20 (a)(7)(ii), the Pacific cod total allowable catch (TAC) for the BSAI was established by the final 1995 harvest specifications of groundfish (60 FR 8479, February 14, 1995) and increased by an apportionment from the reserve (60 FR 32278, June 21, 1995) to 250,000 metric tons (mt). Pursuant to § 675.20 (a)(2)(iv)(A) and (a)(3)(iv), 5000 mt was allocated to vessels using jig gear.

The Director, Alaska Region, NMFS, has determined that vessels using jig gear will not harvest 4,000 mt of Pacific cod by the end of the year. Therefore, in accordance with § 675.20(a)(2)(iv)(C), NMFS is reallocating 45 percent and 55 percent of the unused amount of Pacific cod allocated to vessels using jig gear to vessels using hook-and-line or pot gear and to vessels using trawl gear, respectively. The apportionment of the unused BSAI Pacific cod jig allocation is as follows: To vessels using hook-and-line or pot gear - 1,800 mt, and to vessels using trawl gear - 2,200 mt. Pursuant to § 675.20 (a)(3)(iv), the 1995 Pacific cod TAC is allocated as follows: (1) To vessels using hook-and-line or pot gear - 111,800 mt, (2) to vessels using trawl gear - 137,200 mt, and (3) to vessels using jig gear - 1,000 mt.

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 29, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–24707 Filed 10–4–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 193
Thursday, October 5, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–59–AD]

Airworthiness Directives; Air Tractor, Incorporated Models AT–802 and AT–802A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Air Tractor, Incorporated (Air Tractor) Models AT–802 and AT–802A airplanes. The proposed action would require repetitively replacing the main landing gear legs. Failure of the main landing gear legs on an AT–802A in the field prompted the proposed action. The actions specified by the proposed AD are intended to prevent possible failure of the main landing gear legs, which, if not detected and corrected, could result in loss of control of the landing operations of the airplane.

DATES: Comments must be received on or before December 5, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–59–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Air Tractor Incorporated, P. O. Box 485, Olney, Texas 76374; telephone (817) 564–5616; facsimile (817) 564–2348. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Bob May, Aerospace Engineer, FAA, Aircraft Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–59–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–59–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA received a report of the collapse of an Air Tractor AT–802A airplane equipped with 1.56-inch thick main landing gear legs, part number (P/N) 40091–2. The investigation revealed that the parked AT–802A airplane's main landing gear failed after having made approximately 3,500 landings. There was slight rust under the clamp block where the failure started. This failure of the main landing gear legs in the field has prompted a re-evaluation of the fatigue life of the legs presented in the life limited parts section of the Airplane Maintenance Manual, Airworthiness Limitations Section, defined by section 23.159 of the Federal Aviation Regulations (14 CFR 23.159). The 1.56-inch thick landing gear legs were heat treated to a higher ultimate tensile stress. This higher than normal heat treatment has made them more brittle than gears used on other Air Tractor models.

Air Tractor has issued Service Bulletin (SB) 104A, dated July 29, 1995, which specifies procedures for replacing the main landing gear legs on Models AT–802 and AT 802A airplanes.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent possible failure of the main landing gear legs, which, if not detected and corrected, could result in loss of control of the landing operations and possible loss of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Air Tractor Models AT–802 and AT–802A airplanes of the same type design, the proposed AD would require replacing the main landing gear legs every 3,000 landings.

The FAA estimates that 18 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 12 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $2,816 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $63,648 ($3,536 per airplane). This figure is based on the assumption that no affected airplane owner/operator has replaced the main landing gear legs and does not take into account the number of repetitive replacements each operator would incur over the life of the airplane. The FAA has no way of determining how many main landing gear replacements each owner/operator will incur.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Air Tractor Incorporated: Docket No. 95–CE–59–AD.

Applicability: Model AT–802 and AT–802A Airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it. Compliance: Required upon the accumulation of 3,000 landings or within the next 25 landings after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 3,000 landings.

Note 2: If the number of landings is not known, calculate by multiplying three landings per one hour time-in service.

To prevent possible failure of the main landing gear legs, which, if not detected and corrected, could result in loss of control of landing operations and possible loss of the airplane, accomplish the following:

(a) Replace the main landing gear legs, Air Tractor part number 40091–2, in accordance with Air Tractor Service Bulletin (SB) 104A, dated July 29, 1995.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Fort Worth Aircraft Certification Office, FAA, Aircraft Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Air Tractor Incorporated, P. O. Box 485, Olney, Texas 76374; telephone (817) 564–5616; facsimile (817) 564–2348 or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 28, 1995.

John R. Colomy,

Acting Manager, Small Aircraft Directorate, Aircraft Certification Service.

[FR Doc. 95–24712 Filed 10–4–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–51–AD]

Airworthiness Directives; the New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) Models PA–28–140, PA–28–150, PA–28–160, and PA–28–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain New Piper Aircraft, Inc. (Piper) Models PA–28–140, PA–28–150, PA–28–160, and PA–28–180 airplanes. The proposed action would require a complete landing light support replacement. This proposed AD action is prompted by reports of two accidents and two incidents resulting from the landing light retainer support seal breaking apart and entering the carburetor. The actions specified by the proposed AD are intended to prevent the landing light retainer support seal from being ingested by the updraft carburetor, which, if not detected and corrected, could possibly result in rough engine operation or engine stoppage.

DATES: Comments must be received on or before December 5, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–51–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Piper Service Bulletin (SB) number (No.) 975, dated November 2, 1994, may be obtained from the New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida, 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Juanita Craft-Lloyd, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7573; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–51–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–51–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of two accidents and two incidents of the landing light retainer support seals breaking off and becoming lodged in the throat of the updraft carburetor on certain Piper model PA–28–140, PA–28–150, PA–28–160, and PA–28–180 airplanes. This condition, if left uncorrected, could result in rough engine operation of engine failure and possible loss of control of the airplane.

Piper has issued SB No. 975, dated November 2, 1994, which specifies procedures for replacement of the landing light support and seal assembly with a landing light support and seal of improved design.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent the landing light retainer seal from breaking off and getting lodged in the updraft carburetor, which, if not detected and corrected, could possibly result in rough engine operation or engine stoppage.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Models PA–28–140, PA–28–150, PA–28–160, and PA–28–180 airplanes of the same type design, the proposed AD would require removing the old landing light support and seal assembly and replacing it with a new support and seal assembly of improved design.

The FAA estimates that 16,440 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $140 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,274,400. This figure is based on the assumption that all of the affected airplanes have old landing light support and seal assemblies and that none of the owners/operators of the affected airplanes have placed the landing light support and seal assemblies with parts of improved design.

Piper has informed the FAA that parts have been distributed to equip approximately 850 airplanes. Assuming that these distributed parts are incorporated on the affected airplanes, the cost of the proposed AD would be reduced by $221,000 from $4,274,400 to $4,053,400.

The regulations proposed herein would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

Applicability: The following airplane models and serial numbers, certificated in any category:

Models	Serial Nos.
PA–28–140	28–20000 through 28–7725290.
OPA–28–150, PA–28–160, and PA–28–180.	28–1 through 28–7505259, and 28–E13.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, or upon replacement of the landing light, whichever occurs first, unless already accomplished.

Note 2: Early compliance is encouraged.

To prevent the landing light seal from lodging in the carburetor, which, if not detected and corrected, could result in rough

engine operation or possible engine failure and possible loss of control of the airplane, accomplish the following:

(a) Replace landing light support and seal assembly in accordance with Piper Service Bulletin No. 975, dated November 2, 1994.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 26, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–24818 Filed 10–4–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–AGL–9]

Proposed Realignment of Jet Route J–588

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would alter Jet Route J–588 between the state of Michigan and Canada. This proposed action is necessary because the Stirling, ON, Canada, Very High Frequency Omnidirectional Range (VOR) has been decommissioned. Altering J–588 would ensure continuity for aircraft transitioning along that jet route to and from the United States and Canada.

DATES: Comments must be received on or before November 22, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL–500, Docket No. 95–AGL–9, Federal Aviation Administration, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AGL–9.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter Jet Route J–588 from the Sault Ste Marie, MI, VOR to the Stirling, ON, Canada, VOR. The Stirling VOR was decommissioned in July 1995. To ensure that continuity exists along J–588 for aircraft transitioning to and from the United States and Canada, the jet route would be realigned with the Campbellford, ON, Canada, VOR. Jet routes are published in paragraph 2004 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–588 [Revised]

From Sault Ste Marie, MI; to Campbelllford, ON, Canada. The portion within Canada is excluded.

* * * * *

Issued in Washington, DC, on September 29, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–24801 Filed 10–4–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 95–ANE–22]

Proposed Alteration of V–268

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would alter Federal Airway V–268 in Rhode Island and Maine. V–268 would be modified by extending this airway from the BURDY intersection in Rhode Island to the Augusta, ME, Very High Frequency Omnidirectional Range (VOR). This action would simplify air traffic procedures and enhance air traffic service.

DATES: Comments must be received on or before November 22, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANE–500, Docket No. 95–ANE–22, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ANE–22.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter VOR Federal Airway V–268 from the BURDY intersection in Rhode Island to the Augusta, ME, VOR. Extending V–268 would provide a transition route in support of the approach at the Portland International Jetport Airport, ME, thereby simplifying air traffic procedures and enhancing air traffic service. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points,

dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–268 [Revised]

From INT Morgantown, WV, 010° and Johnstown, PA, 260° radials; Indian Head, PA; Hagerstown, MD; Westminster, MD; Baltimore, MD; INT Baltimore 093° and Smyrna, DE, 262° radials; Smyrna; INT Smyrna 086° and Sea Isle, NJ, 050° radials; INT Sea Isle 050° and Hampton, NY, 223° radials; Hampton; Sandy Point, RI; to INT Sandy Point 031°T(046°M) and Kennebunk, ME, 180°T(197°M) radials; INT Kennebunk 180°T(197°M) and Boston, MA, 032°T(048°M) radials; INT Boston 032°T(048°) and Augusta, ME, 195°T(213°M) radials; to Augusta. The airspace within R–4001 and the airspace below 2,000 feet MSL outside the United States is excluded.

* * * * *

Issued in Washington, DC, on September 29, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–24802 Filed 10–4–95; 8:45 am]

BILLING CODE 4910–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2615

RIN 1212–AA77

Reportable Events

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of establishment of the Reportable Events Negotiated Rulemaking Advisory Committee.

SUMMARY: The Pension Benefit Guaranty Corporation has established a negotiated rulemaking advisory committee under the Negotiated Rulemaking Act of 1990, which will meet for the first time on October 11, 1995. The committee will develop proposed amendments to the PBGC's regulations governing reportable events, *i.e.*, events that may be indicative of a need to terminate a pension plan. These amendments will, among other things, implement recent amendments contained in the Retirement Protection Act of 1994.

ADDRESSES: Minutes of all meetings and other documents made available to the committee will be available for public inspection and copying at the PBGC's Communications and Public Affairs Department, Suite 240, 1200 K Street, Washington, DC 20005–4026 between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Office of the General Counsel, PBGC, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1995, the PBGC published (at 60 FR 41033) a notice of intent to establish a negotiated rulemaking advisory committee to develop proposed amendments to the PBGC's regulations governing reportable events. Further information on the role of the committee and the scope of the proposed rule can be found in the notice of intent.

In the notice of intent, the PBGC requested comments on the appropriateness of regulatory negotiations for the proposed regulations. A number of comments supported, and none opposed, the PBGC's planned use of regulatory negotiations for this rulemaking. Based on this response and for the reasons stated in the notice of intent, the PBGC has determined that establishing this advisory committee is necessary and in the public interest.

In accordance with the Federal Advisory Committee Act, the PBGC prepared a Charter for the establishment of the Reportable Events Negotiated Rulemaking Advisory Committee. On September 25, 1995, the Office of Management and Budget approved the advisory committee, and on September 29, 1995, the PBGC filed the Charter with Congress.

Committee Membership

In the notice of intent, the PBGC included a list of possible committee members and requested that applications and nominations for membership on the committee be submitted by September 15, 1995. The PBGC received two applications for additional membership on the committee.

The first application was submitted by McDermott, Will & Emery, a law firm, to represent companies subject to reportable events requirements. The applicant expressed concern that non-public companies that may be subject to the new advance reporting requirements in ERISA section 4043(b) may have unique interests that other committee members would not have a particular stake in advancing. While other committee members will represent the interests of all employers, the PBGC believes it would be useful to have a member representing the particular interests of advance reporting companies. Accordingly, the PBGC accepts McDermott, Will & Emery as a committee member to serve that purpose.

The second application was submitted by a certified public accountant. The applicant did not identify any reason that the proposed committee members do not adequately represent his interests. The PBGC notes that the applicant is a member of the American Institute of Certified Public Accountants, which is a member of the committee. For these reasons, the PBGC does not accept the application.

Accordingly, the members of the committee are the PBGC, the other members proposed in the notice of intent, and McDermott, Will & Emery (to represent advance reporting companies).

First Meeting of Committee

On September 26, 1995, the PBGC published a notice of the first meeting of the committee (60 FR 49531), which will be held at 10:00 a.m. on October 11, 1995, at 1200 K Street, Washington, DC 20005–4026.

The primary purpose of the first meeting will be to establish committee procedures. One comment recommended that certain procedures be followed in the conduct of committee meetings. The committee will consider this comment in establishing its procedures.

Issued in Washington, D.C., this 29th day of September, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–24778 Filed 10–4–95; 8:45 am]

BILLING CODE 7708–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS-FRL–5302–4]

Regulation of Fuels and Fuel Additives: Revision to the Oxygen Maximum Standard for Reformulated Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing to revise the regulations for reformulated gasoline in two ways. The first revision would raise the maximum oxygen content for volatile organic

compounds (VOC)-controlled gasoline (i.e, summertime reformulated gasoline) under the Simple Model to the maximum oxygen content allowed under section 211(f) of the Clean Air Act (CAA, or the Act), as much as 3.5–4.0 percent by weight, depending on the oxygenate selected. This revision would further provide that the maximum oxygen content of VOC-controlled reformulated gasoline would be lowered in any state, should the governor request a lower oxygen content based on air quality concerns. The second revision would adjust the maximum oxygen content allowed for both summertime and wintertime reformulated gasolines under the Simple Model to account for variations in the density of the base gasolines to which the oxygenates are added.

DATES: EPA will conduct a hearing (date and location to be announced) if a request for such is received by October 20, 1995. The comment period on this notice will close November 6, 1995, unless a hearing is requested, in which case the comment period will close 30 days after the close of the public hearing.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to Public Docket No. A–95–29 at Air Docket Section, U.S. Environmental Protection Agency, Waterside Mall, Room M–1500, 401 M Street S.W., Washington, D.C. 20460. The Agency requests that commenters also send a copy of any comments to Christine M. Brunner at the address listed below in the ''Further Information'' section.

Materials relevant to the reformulated gasoline final rule are contained in Public Dockets A–91–02 and A–92–12. Public Docket A–93–49 contains materials relevant to the renewable oxygenate requirement for reformulated gasoline; some of these materials may also be relevant to today's action. These dockets are located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. The docket may be inspected from 8:00 a.m. until 5:00 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Christine M. Brunner, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4287. To request copies of this document, contact Delores Frank, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4295.

SUPPLEMENTARY INFORMATION:

I. Electronic Copies of Rulemaking Documents Through the Technology Transfer Network Bulletin Board System (TTNBBS)

A copy of this notice is also available electronically on the EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). The service is free of charge, except for the cost of the phone call. The TTNBBS can be accessed with a dial-in phone line and a high-speed modem per the following information:

TTN BBS: 919–541–5742
(1200–14400 bps, no parity, 8 data bits, 1 stop bit)
Voice Help-line: 919–541–5384
Accessible via Internet: TELNET ttnbbs.rtpnc.epa.gov
Off-line: Mondays from 8:00 AM to 12:00 Noon ET

A user who has not called TTN previously will first be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the Top Menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
<M> OMS—Mobile Sources Information
<K> Rulemaking and Reporting
<3> Fuels
<9> File Area #9...Reformulated gasoline

At this point, the system will list all available files in the chosen category in reverse chronological order with brief descriptions. These files are compressed (i.e., ZIPed). Today's notice can be identified by the following title: OXCPNPRM.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp
Selection or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de- archivers. After getting the files you want onto your computer, you can quit the TTNBBS with the <G>oodbye command. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

II. Introduction

40 CFR 80.41 contains the standards for certification under the reformulated gasoline program. Paragraph (g) of this section specifies that reformulated gasoline designated as VOC-controlled (i.e., for sale during the ozone season) must have no more than 2.7 percent by weight (wt%) oxygen per gallon. The regulations further specify that if a state notifies the Administrator that it wishes to have the oxygen standard increased for VOC-controlled reformulated gasoline, a higher cap of 3.5 wt% will be approved by the Administrator provided that there have been ''no occasions within the three preceding years when the ozone ambient air quality standard was exceeded within any covered area within the state.'' EPA expects that a state would make this request primarily to permit and encourage the use of ethanol at volumes of up to 10% (which, as will be discussed in sections VIII and IX, is equivalent to approximately 3.5–4.0 wt% oxygen, depending upon the specific gravity of the base gasoline). In requesting and obtaining this different standard, the states would not be requiring the use of this maximum level of oxygen; rather, an increase in the standard for maximum oxygen content would provide refiners the option to produce reformulated gasoline with oxygen up to that level. Section 80.41(g) further states that the maximum oxygen content for non-VOC-controlled reformulated gasoline is 3.5 wt%, unless a state requests that EPA limit the oxygen content to 2.7 wt% due to concerns that ''the use of an oxygenate will interfere with attainment or maintenance of an ambient air quality standard, or will contribute to an air quality problem.''

In reexamining this reformulated gasoline provision, EPA believes that the maximum oxygen content for VOC-controlled reformulated gasoline is an unnecessary regulatory burden on gasoline and oxygenate producers, and that the requirements for a state to choose a higher oxygen level are also burdensome. Thus, EPA is proposing to raise the maximum oxygen content of VOC-controlled reformulated gasoline to a higher oxygen level (nominally 3.5–4.0 wt%) than currently allowed for VOC-controlled reformulated gasoline. Specifically, EPA proposes to increase the maximum oxygen content of VOC-controlled reformulated gasoline such that reformulated gasoline containing

up to 10 vol% ethanol can be certified. Additionally, EPA proposes that upon request of the Governor to the Administrator, the maximum oxygen content of reformulated gasoline sold in that state would be capped at a lower level on the basis of air quality concerns. In short, the maximum oxygen content provisions for VOC-controlled reformulated gasoline would adopt the same approach as the current provisions for non-VOC-controlled reformulated gasoline.

EPA is also proposing to increase the maximum oxygen contents for both VOC- and non-VOC-controlled reformulated gasoline to accommodate differences in specific gravities of the base gasolines to which the oxygenates are added. These provisions would allow the oxygenates used in reformulated gasoline to be used up to their lawful limits per section 211(f), including the terms of any waiver issued under that provision, without concern for the density of the base gasoline to which the oxygenate is added.

There are a number of benefits to be gained by these changes to the regulation. As discussed in the following sections, these include the potential for reduced burden on the states and industry, reduced cost for compliance with the reformulated gasoline requirements, and reduced costs to the consumers. The following sections present the background behind the oxygen maximum standard; the options considered for modification of the requirements; the economic, environmental, and energy implications of the proposed actions; and technical reasons for increasing the maximum oxygen content for VOC- and non-VOC-controlled reformulated gasoline.

III. History of the Reformulated Gasoline Standard for Maximum Oxygen Content (Oxygen Cap)

The Act requires that reformulated gasoline have no NO_x emissions increase compared to the statutory baseline gasoline for baseline vehicles [section 211(k)(2)(A)]. Furthermore, the Act specifies that reformulated gasoline contain a minimum of 2.0wt% oxygen. As summarized in the final rule on reformulated gasoline (February 16, 1994, 59 FR 7721–22), data available early in the rulemaking process to the Agency and to the regulatory negotiation (Reg-Neg) Advisory Committee indicated that fuel oxygen content and the type of oxygenate used had an impact on NO_x emissions while no other parameter of the Simple Model appeared to have such an impact.

Based on these data and the agreements reached in the Reg-Neg process, EPA proposed provisions that would cap the oxygen content of VOC-controlled reformulated gasoline (see 57 FR 13416) this was reflected in both the Reg-Neg agreement and an accompanying letter to the Renewable Fuels Association. The draft regulations specified a test program by which a petitioner could demonstrate no increase in NO_x emissions to justify a higher than 2.1/2.7 wt% oxygen content in reformulated gasoline sold in the ozone season. As discussed in the subsequent proposal (February 26, 1993, 58 FR 11732–33), additional data revealed no need to differentiate between oxygenates, and it was proposed that the oxygen cap be 2.7 wt% for all oxygenates during ozone months. However, at that time the Agency continued to believe that increasing oxygen content from 2.7 wt% to 3.5 wt% might result in increased NO_x emissions, and, thus, proposed prohibiting the use of VOC-controlled reformulated gasoline containing more than 2.7 wt% oxygen unless a state requested otherwise and provided supporting data from the specified test program.

In April 1992, EPA proposed that reformulated gasoline sold outside of the ozone season contain a maximum of 3.5 wt% oxygen (57 FR 13420). This proposal was consistent with the Reg-Neg agreement and all data available at the time. If a state believed that the use of an oxygenate would interfere with attainment or maintenance of another ambient air quality standard or other air quality problem, and so notified the Administrator, the maximum oxygen content for reformulated gasoline sold in that state would be 2.7 wt% (unless the state petitioned for another maximum oxygen content following a data collection process specified elsewhere in the draft regulations).

Additional data made available during development of the final rule, including the final form of the Complex Model (the compliance model required to be used starting in 1998, voluntarily prior to that time), showed that increased oxygen content should actually result in no increase in NO_x emissions. The fuel changes expected upon addition of oxygen (i.e., reduced sulfur, olefins, aromatics and increased E300 [1] and E200 based on the dilution effect of adding oxygenate) should result in a net decrease in NO_x emissions, based on the Complex Model. While the expected increase in E200 would increase NO_x emissions, the sum of the other expected changes (which all decrease NO_x) should result in an overall NO_x reduction. However, the Simple Model provisions did not directly control these expected changes to gasoline qualities that were expected to occur when oxygenates were added. In other words, although the dilution effects were expected, they, and their associated effects on NO_x emissions, were not assured under the terms of the Simple Model. The Agency stated that since there was no assurance under the Simple Model that oxygenate addition would not increase NO_x emissions, and since the more oxygenate that is added the greater the possible increase in E200 (and thus the greater the possibility for a NO_x increase), it was appropriate to cap the maximum oxygen content (See 59 FR 7719–20). In the final regulations, the Agency specified that only requests to raise the cap to 3.5 wt% for VOC-controlled reformulated gasoline from states that could demonstrate no ozone exceedances over the prior three years would be considered for approval. This provision replaced the proposed test program to demonstrate no NO_x increase resulting from the use of oxygen at higher levels. The provisions for non-VOC-controlled (outside of the ozone season) reformulated gasoline remained the same as proposed.

IV. Proposed Changes to Oxygen Cap Requirements

Upon further consideration of the issues, EPA now believes that the current provisions relating to increasing the maximum oxygen content of VOC-controlled reformulated gasoline are unnecessarily burdensome and should be changed. Specifically, EPA proposes to increase the maximum oxygen content of VOC-controlled reformulated gasoline such that reformulated gasoline containing up to 10 vol% ethanol can be certified. EPA also proposes that the oxygen content of reformulated gasoline sold in that state will be limited to a lower level upon the request of the Governor on the basis of local air quality concerns. To obtain this lower maximum oxygen content, the Governor notify the Administrator that the use of an oxygenate at higher levels would interfere with attainment or maintenance of a National Ambient Air Quality Standard, or will contribute to an air quality problem. The lower oxygen cap would become effective 30 days after the Administrator announced the lower standard in the Federal Register. This lower maximum would be the maximum allowed under section 211(f), but not to exceed 3.2 wt% oxygen when ethanol is the oxygenate. Under 211(f), MTBE is limited to 15

[1] E300 and E200 are defined in 40 CFR 80.45.

vol% and ethanol to 10 vol%. Blending MTBE at 15 vol% adds approximately 2.7% oxygen. However, due to variations in the density of gasoline, it is possible that when trying to achieve an oxygen content of 2.7%, the addition of 15 vol% MTBE or 7.8 vol% ethanol may result in an oxygen content as high as 3.2% (see section VIII below for further explanation). As a consequence, EPA is proposing that if a governor requests to lower the oxygen cap from 3.5%, the maximum oxygen content in that state would be lowered to a level equivalent to a nominal 2.7% but not to exceed 3.2%.

As discussed in detail below in section VI.D, EPA believes it is very unlikely that a NO_x increase will occur for any one batch of reformulated gasoline, and that the potential NO_x increase, if any, would be small. A ''worst case'' scenario would involve the expected increase in E200, but with no other dilution effects that would reduce NO_x, offsetting the increase in E200. Under such a scenario, NO_x emissions for a batch of reformulated gasoline would increase by about 0.12% for an oxygen content change from 2.7 to 3.5 wt%. However, there are several reasons why such a scenario is speculative and unlikely to occur. First, the toxics standards for reformulated gasoline should lead to reduced aromatics levels even without the addition of oxygenates, and this will lead to reduced NO_x emissions. Second, the addition of oxygenates would normally lead to all of the additional dilution effects noted above, and not just to the increase in E200. It is unlikely that a refiner would intentionally offset the dilution effects for sulfur, olefins, and aromatics, allowing only E200 to increase. It appears that the antidumping provisions which affect conventional gasoline, combined with the limits on fuel parameters governed by each refiner's 1990 baseline operating levels limit the ability of refiners to adjust refinery operations to that degree. Thus while there is no specific provision in the Simple Model requiring that individual batches of gasoline containing more than 2.7 wt% oxygen have sulfur, olefin, aromatic, and E200 levels that do not increase NO_x emissions, an increase is unlikely and if it should occur it would be small. EPA believes it is likely that batches of reformulated gasoline will exhibit the dilution effects. Thus, on average across all of the reformulated gasoline sold by all refiners in an area, a NO_x reduction, or at least no increase in NO_x, is likely to occur. The Agency requests comments on these conclusions, particularly on the likely reaction of refiners to the ability to blend higher levels of oxygenate in VOC-controlled reformulated gasoline and how dilution effects may be anticipated in the production of reformulated gasoline.

Given the small likelihood of NO_X increases under the Simple Model for individual batches of reformulated gasoline (from increases in E200, without corresponding NO_X reductions from reductions in other parameters), the likelihood that overall reformulated gasoline should lead to NO_X reductions on average, and the benefits of increased oxygenate use, EPA now believes it is appropriate to revise the oxygen content cap under the Simple Model by raising it to the limit allowed under section 211(f) of the Act. This would remove what appears to be an unnecessary limitation on oxygenate use under the current regulations. While neither the Complex Model nor other basic facts have changed since the oxygen cap was promulgated in December 1993, EPA has reevaluated the need for such a cap and is now proposing to make revisions in light of this reevaluation.

In raising the cap, the Agency believes that it will make it easier for higher levels of oxygen to be used in VOC-controlled reformulated gasoline (this will primarily affect the use of ethanol, since at present ethanol is the only oxygenate which legally can be blended at levels in excess of 2.7 wt% oxygen). This proposed action, however, will retain the initiative at the state level to restrict higher oxygen levels in reformulated gasoline, consistent with respect to how this issue was handled for non-VOC-controlled (''wintertime'') reformulated gasoline. Although as explained in section VI below the Agency believes that this action will have no significant environmental impact, by leaving this initiative with the states this action accommodates those states which are particularly concerned about potential local air quality impacts of increased ethanol use.

EPA proposes that any decrease in the maximum allowed oxygen content (at the request of a state), be effective 30 days after EPA publishes notice in the Federal Register of such change. This would provide reasonable notice of the change to all affected parties. EPA also proposes that, if today's proposal is finalized, the higher maximum oxygen content would become effective 60 days after publication of the final regulations in the Federal Register. If states do not want reformulated gasoline with the higher oxygen content to be sold in their state beginning with this effective date, they must notify the Administrator prior to the that date. After the proposed regulations took effect, states may request to lower the maximum oxygen content at any time.

EPA requests comments on all aspects of this proposed action.

V. Economic Impacts

The largest part of the cost associated with Phase I (1995–1999) reformulated gasoline is the oxygen content required by the Act. Since ethanol generally costs less than MTBE per gallon (due largely to the pro-rated tax credit available to ethanol blenders in both the federal and some state tax codes) and contains almost twice as much oxygen per gallon, it has a considerable economic advantage as an oxygenate. However, this cost advantage varies by geographic market and can also be offset by the incremental costs for distribution and segregation of ethanol blends, which are much higher than for MTBE blends. Production and distribution costs for the oxygenates plays a major role in determining market share.

Refiners must also consider a variety of other operating costs when selecting an oxygenate for reformulated gasoline (or any other fuel). One of the costs associated with reformulated gasoline under the Simple Model is the cost associated with control of Reid vapor pressure (RVP). Most of the required reductions of VOC emissions are obtained in reformulated gasoline through reductions in RVP. The cost per finished gallon of reformulated gasoline for producing the sub-RVP blendstock to be blended with ethanol is lower on average by about 0.04–0.05 cents per gallon when the ethanol is blended at the maximum concentration possible instead of lower concentrations. Hence, it is slightly more economically attractive to use ethanol at 10 vol% (roughly 3.5–4.0 wt% oxygen) than at 7.8 vol% (2.7 wt%).

The small economic advantage provided by lifting the oxygen cap may be sufficient enough to allow some refiners to use ethanol during the ozone season when otherwise they would not do so. While the overall impact of this is expected to be marginal, it should contribute toward an increase in the total volume of ethanol produced in this country during the summer. It is not expected to affect the overall production capacity of ethanol, however, due to the much greater demand during the winter, and the fact that any additional benefits of this action to the ethanol industry will be short-lived, since the oxygen cap provisions only affect reformulated gasoline sold through the year 1997.

There is also some potential that today's proposal will result in a change

in the volume of ethanol used in reformulated gasoline areas. This could occur if refiners elect to shift ethanol use in the summer months from use as an octane enhancer in conventional gasoline, presumably a lower value use, to a presumably higher value use as an reformulated gasoline oxygenate. Unless some states choose to lower the cap, the consumption of ethanol may increase and that of MTBE decrease in most area(s), and as a result on average in reformulated gasoline areas as a whole. However, it is not possible to predict how the refining industry will react to this added flexibility. Comments on this issue are requested by the Agency.

There is the potential for a number of other economic impacts as a result of this proposed action. If summertime consumption of ethanol increases in reformulated gasoline areas, ethanol producers are expected to benefit. To the extent that the use of ethanol is concentrated in several states where ethanol is particularly economically attractive and that some refiners decide to use ethanol in those areas, the proposed oxygen cap modifications may result in slight economic benefits to both refiners (who benefit from the additional flexibility of having a broader range of oxygenate options) and ethanol producers (who may benefit from reductions in transportation or storage costs). The consumers of reformulated gasoline containing ethanol may, in turn, benefit from these changes. MTBE producers could be adversely affected if less MTBE is used in reformulated gasoline as a result of this proposed change. Nonetheless, by reducing the hurdles to using the maximum amount of ethanol and increasing the flexibility of refiners in selecting oxygenates, this action is expected to reduce the overall negative economic impacts and regulatory burden of the reformulated gasoline program.

Comments on any of the assumptions and issues raised in this section are requested.

VI. Environmental and Energy Impacts

Since today's action may result in some localized increase in summertime ethanol use at higher levels than would otherwise have occurred, some of the concerns that have been raised in the past regarding ethanol use in reformulated gasoline must be reexamined. The Agency has examined the environmental and energy impacts of modifying the oxygen cap requirements under the Simple Model. This proposal has the potential to slightly increase summertime ethanol consumption nationally, or at least to shift ethanol consumption from conventional fuel areas to reformulated gasoline areas (and consequently decrease MTBE consumption in reformulated gasoline areas). To the extent that increases in the use of ethanol occur in some locations barring state actions to lower the oxygen cap, there may be some environmental impacts, as discussed below. EPA expects there to be no change in the energy implications of the reformulated gasoline program as a result of today's proposed action.

The Agency requests comment on the various aspects of the environmental and energy impact analyses presented below.

A. NO_X Emissions Impact

As mentioned above, the primary concern with allowing higher levels of oxygen in VOC-controlled reformulated gasoline under the Simple Model has in the past been the potential for increased NO_X emissions. The Agency concluded in the final rule for reformulated gasoline, on the basis of results generated by the Complex Model, that the use of greater levels of oxygen would not by itself increase NO_X emissions (although the associated higher levels of oxygenates could theoretically increase emissions due to the unpredictable impacts of dilution). The Complex Model is the most accurate and complete model relating fuel composition to emissions performance currently available for use in the reformulated gasoline program. EPA would have required use of the Complex Model for purposes of certification during the entire reformulated gasoline program, however, based on leadtime considerations, EPA promulgated the Simple Model for use during the first three years of the reformulated gasoline program (e.g., through 1997). This decision was based on the fact that EPA had every confidence that on average the refiners certifying their fuel using the Simple Model will achieve the emission reductions that Congress intended for the reformulated gasoline program (see 59 FR 7721–22 for more discussion of this issue). In any case, EPA clearly determined that changing the oxygen content of reformulated gasoline is unlikely to have any negative impact on NO_X emissions, regardless of the type of oxygenate under consideration. Consequently, today's proposed action is not expected to increase NO_X emissions when reformulated gasoline is compared to baseline gasoline, and thus should satisfy the requirements of section 211(k)(2) of the Act.

Individual states may still have some concerns about the impact of increased oxygen levels on NO_X. The basis for their concerns is the uncertainty about the impact of reformulated gasoline in-use. The reformulated gasoline program, including all of the standards and provisions discussed in today's action, is based on the emissions reductions to be obtained from 1990 technology vehicles using baseline gasoline. To the extent that the emissions impacts of various reformulated gasolines are different for other-than-1990 technology vehicles, states may have concerns about the NO_X (or other) emissions impacts of today's proposed action. Consequently, it is reasonable to permit the states to limit the oxygen content of reformulated gasoline in their state on the basis of their concerns.

B. VOC Emissions Impacts

Phase I reformulated gasoline is required to yield a 15% reduction in emissions of volatile organic compounds (VOC) from 1990 technology vehicles using a baseline gasoline. Under the Simple Model, at least a 15% reduction is guaranteed for any reformulated gasoline that meets all of the specifications of the model. The use of greater volumes of ethanol (per gallon and overall) can affect VOC emissions, as described below. In general, EPA believes today's proposed action would have no or slightly positive impacts on VOC emissions.

1. RVP Boost

Although ethanol slightly increases the RVP of a gasoline to which it is added, there is no potential for an increase in the RVP of a VOC-controlled reformulated gasoline under the Simple Model as a result of any modifications to the oxygen cap. This is because the Simple Model includes RVP specifications for reformulated gasoline that are not being modified by today's proposal. Comments and additional information on this issue are requested.

2. Commingling

Another concern with the potential for increased use of ethanol-containing reformulated gasoline is the phenomenon described as commingling. A detailed analysis describing the commingling effect can be found in the Regulatory Impact Analysis for the final rule on reformulated gasoline (December, 1993; available in public docket A–92–12). To summarize briefly, when ethanol is mixed with gasoline, a non-linear increase in the RVP is observed. The non-linear nature of ethanol's blending RVP means that the mixing of ethanol blends with other

non-ethanol containing gasolines downstream of the refinery (e.g., in vehicle fuel tanks) can result in an additional vapor pressure increase across the in-use pool of gasoline. This RVP increase caused by fuel mixing is what is referred to as the commingling effect.

EPA's analysis of the commingling effect shows that commingling can significantly increase VOC emissions in some instances. The effect increases as ethanol's share of the reformulated gasoline oxygenate market increases, up to a maximum ethanol market share of approximately 50%. However, after examination of the commingling analysis, EPA believes that there may be a commingling benefit associated with today's proposal. Due to the non-linear nature of the RVP boost curve for ethanol, the commingling impact should be less with the use of higher concentrations of ethanol (e.g., 10 vol% ethanol, roughly 4.0 wt% oxygen) in fewer gallons of gasoline than would occur with the use of a lower concentration (e.g., 7.8 vol% ethanol, roughly 2.7 wt% oxygen) added to more gallons of gasoline. Thus, from a national perspective there may be a slight commingling benefit associated with today's rule.

To the extent today's proposal would cause a slight increase in the amount of ethanol used throughout the reformulated gasoline program, or cause a shift in ethanol use from states which maintain the current cap to states which do not restrict oxygen content, or cause a shift from conventional gasoline to reformulated gasoline, commingling-related VOC emissions will also be shifted. The overall impact of commingling on the states in which ethanol use increases would depend on the magnitude of the increase. If total ethanol volume in a state remains the same and the use of 10 vol% ethanol blends increases, then there will be a beneficial effect as a result of commingling because of the reduced number of ethanol-containing gallons of reformulated gasoline available in the marketplace. Any comments or additional data on this issue are requested.

C. Toxics Emissions Impact

The Complex Model indicates that some oxygenates, such as ethanol, provide smaller air toxic benefits than others (e.g., MTBE) when used at identical oxygen levels. However, today's proposal does not alter the toxics performance standards under the Simple Model. Hence, refiners will still be required to comply with the toxics standards regardless of the type of oxygenate or volume of oxygen used.

D. Impacts of Dilution Under the Simple Model

As discussed above in section IV, under the Simple Model there is no provision actually requiring the expected impact of dilution on the other gasoline components (fuel parameters or fuel qualities). The concerns which led EPA to retain the oxygen cap of 2.7 wt% in the final rule for reformulated gasoline centered not around the impact of oxygen itself on NO_X, but on the impact of other fuel parameters, which are impacted by the addition of oxygenates, on NO_X. This concern prompted EPA to retain the cap on oxygen, thus limiting the volumes of oxygenates used in reformulated gasoline, in the final rule.

If the refiner makes no other changes to the gasoline production process, the addition of an oxygenate will dilute the concentration of other fuel components. While most dilution impacts are beneficial, some may be detrimental (e.g., the E200 effect on NO_X previously discussed). Because NO_X emissions are only affected by dilution effects (NO_X emissions do not increase solely due to an oxygen content change) and because it is highly unlikely that an increase in E200 will occur absent the other dilution effects, NO_X emissions are not expected to increase with increased oxygenate volumes (which accompany higher oxygen contents). Furthermore, EPA believes that while in any given gallon the theoretical combination of fuel effects may be detrimental, it is highly unlikely that this would be the case, especially when the average of all reformulated gasoline sold in a given area is considered. As a result, EPA now believes that the previous concern that uncontrolled variations in the other fuel parameters could increase NO_X emissions is too unlikely to occur to warrant continuing the cap on oxygen content. Increasing the cap from 2.7% to a higher level should not increase in any way the likelihood that refiners will certify batches of reformulated gasoline that have increased NO_X levels over the baseline gasoline.

However, from an overall perspective, there may be a slight shift toward ethanol from MTBE in states which do not limit the higher oxygen content proposed today. The average oxygen level within that state should theoretically remain at minimum average 2.1 wt% as a result of the oxygen averaging and trading provisions of the reformulated gasoline program. Hence, it is reasonable to assume that if more ethanol is used to produce higher oxygen content blends (e.g., 10 vol% ethanol yielding roughly 3.5–4.0 wt% oxygen), the MTBE-containing reformulated gasoline used in that area would contain somewhat less than 2.1 wt% oxygen. Since ethanol has a higher oxygen content per volume of oxygenate than MTBE, it takes less ethanol than MTBE to achieve the same oxygen content. (For example, to create an reformulated gasoline containing 2.7 wt% oxygen, it takes about 7.8 volume percent (vol%) ethanol but almost 15 vol% MTBE.) Even when ethanol is blended at 10 vol% levels (roughly 3.5–4.0 wt% oxygen), it displaces less gasoline than MTBE blended to reach 2.7 wt%. As a result, a shift towards ethanol would result in a lower volume of total oxygenates blended in an reformulated gasoline area, and potentially an overall reduction in the amount of dilution that would occur. While the Complex Model shows that less NO_X reductions could occur with less dilution from an increased amount of ethanol in the reformulated gasoline oxygenate pool, the change in NO_X reductions is very small, no more than 1 percent.

EPA expects, for a number of reasons, that any air quality effects resulting from such differences as a result of a change in the oxygen cap would be minimal. First of all, any increase in ethanol use resulting from today's proposal is expected to be small. Second, the change in emissions due to the differences in dilution between ethanol and MTBE predicted by the Complex Model is fairly small. Third, reformulated gasoline producers are required under the Simple Model not to exceed their 1990 baseline levels of sulfur, T90, and olefins. These caps limit the impact of any air quality effects related to differences in dilution between oxygenates. The Agency requests comments on the issue of the potential environmental impacts resulting from changes in dilution as a result of today's proposal.

E. Non-Air Quality Impacts

The Agency is concerned about other environmental impacts of an action that might alter the relative amounts of oxygenates used under the reformulated gasoline program. In response to the proposed renewable oxygenate requirement (58 FR 68343), EPA received many comments identifying some of the negative environmental impacts which allegedly could occur from an increase in production of ethanol. Most of these comments focused on the water and soil quality implications of increased corn farming for ethanol production. Given that EPA

does not expect the proposed modification of the oxygen cap to result in significant increases in ethanol consumption overall, it is not expected that any large increase in total corn output would result from this action. To the extent that small increases in ethanol production do occur as a result of today's proposal, the impact on corn production is likely to be small as well. Thus, the non-air quality impacts associated with the proposed modification to the oxygen cap would be negligible. The Agency requests comments on these assumptions, and on other non-air quality impacts that could result under today's proposal.

F. Energy Impacts

In addition to potential environmental impacts, EPA has examined the potential energy impacts of today's proposal. While the production of much of the ethanol in the country generates (on the margin) more energy and uses less petroleum than went into its production, a study by the Department of Energy submitted with comments to the renewable oxygenate requirement proposal indicated that the margin virtually disappears when ethanol is used to make VOC-controlled reformulated gasoline (see the final Regulatory Impact Analysis for the renewable oxygenate requirement, June 29, 1994). The energy loss and additional petroleum consumption necessary to reduce the volatility of the blend (to offset the volatility increase caused by the ethanol) causes the petroleum balance to go negative when compared to MTBE-blended reformulated gasoline, while the overall balance of fossil energy consumption remains slightly positive. Since, however, today's proposed action is not expected to significantly increase the total volume of ethanol produced in this country over the next two years (through 1997), the energy impacts of the reformulated gasoline program are expected to remain essentially unchanged as a result of this proposal.

VII. Other Alternatives

As an alternative to the proposal described above, EPA also requests comment on two alternatives. The first alternative would remove the oxygen cap entirely, allowing up to the maximum oxygen content permitted under section 211(f), (includes up to 10 vol% ethanol—roughly 3.5–4.0 wt% oxygen—or 15 vol% MTBE, roughly 2.7–3.2 wt% oxygen), yearround for both VOC and non-VOC controlled reformulated gasoline. Under this option, the regulations would not limit the oxygen content of reformulated gasoline even if a state notifies EPA of environmental reasons for such a limit. EPA believes that this option is less desirable because it eliminates a state's ability to control the oxygen content of both VOC-controlled and non-VOC-controlled reformulated gasoline, regardless of the environmental implications for their state. Given some uncertainty over the in-use emissions implications of the use of reformulated gasoline with a higher oxygen content, as discussed above in section VI.A, it is reasonable to allow states to evaluate the environmental implications of increasing the oxygen content for their specific situation and based upon their unique concerns. The Agency requests comments on the potential benefits and detriments of electing to remove the oxygen cap entirely.

The second alternative would maintain the cap (at 2.7 wt%) in the summertime, but allow states to request a higher maximum oxygen content (up to the maximum allowed under section 211(f)). Currently, states may request a higher cap, but must show that no ozone exceedances had occurred in a covered area during the previous three years. This alternative would remove the ''no ozone exceedances'' requirement, reducing the burden on the states and allowing them to quickly and easily have reformulated gasoline with the higher oxygen content. EPA believes that this alternative option in effect presumes that increased oxygen might cause an increase in NO_X emissions from RFG, and is therefore inconsistent with EPA's view that increased oxygen does not adversely affect NO_X emissions for RFG. Today's proposal would establish the higher maximum oxygen content, unless a state requests that it be lowered, based upon EPA's view that a higher oxygen content does not increase NO_X emissions in 1990 technology vehicles. EPA requests comments on the appropriateness of this alternative option, and in particular a comparison of the relative benefits of the option being proposed today compared to this alternative option, as well as a comparison of the relative benefits of the second and third options.

VIII. Effect of Base Gasoline Density on Oxygen Content and Related Proposal

As stated earlier, section 80.41(g) of the final rule specifies a maximum oxygen content of 2.7 wt% (and in limited cases 3.5 wt%) for VOC-controlled Simple Model reformulated gasoline and 3.5 wt% (unless a state requests that it be 2.7 wt% for environmental reasons), for non-VOC-controlled Simple Model reformulated gasoline. These maximums (or caps) are consistent with the Simple Model valid range upper limit for oxygen content.

In a later rulemaking (59 FR 36944, July 20, 1994), however, EPA changed the upper limit of the valid range for oxygen content from 3.5 wt% to 4.0 wt% (for both the Simple and Complex Models) to accommodate compositional (i.e., specific gravity or, equivalently, density) differences in the base gasoline to which the ethanol is added. Variations in the base gasoline specific gravity can cause the oxygen content of the final oxygenated blend to vary for the same volume of oxygenate. For example, for a 10 vol% ethanol blend, the oxygen content could vary, roughly, from 3.4 to 4.0 wt%. For all oxygenates, variations in the base gasoline density can cause the resulting oxygen content to vary for the same volume of an oxygenate.

Although EPA changed the valid range of the models, the Agency did not at that time address changing the maximum oxygen content allowed in reformulated gasoline under section 80.41(g). Subsequent to this, EPA stated in guidance that

> ''* * * [it] believes that the maximum oxygen content provisions for reformulated gasoline should accommodate blended oxygenates that meet the applicable Clean Air Act section 211(f) 'substantially similar' and waiver provisions. In consequence, EPA believes the oxygen maximums specified in 80.41(g) should be adjusted to reflect the expected maximum oxygen content when (RBOB) is blended with 10 vol% ethanol in the case of non-VOC-controlled RFG and 7.7 vol% ethanol in the case of VOC-controlled reformulated gasoline.[2]''

RBOB is the acronym for ''reformulated gasoline blendstock for oxygenate blending'' which is a base gasoline blendstock which requires only the addition of an oxygenate to become reformulated gasoline. The guidance stated that the adjusted oxygen maximum for VOC-controlled reformulated gasoline would be 3.2 wt% (the maximum expected for MTBE at 15 vol% or ethanol at 7.8 vol% considering density variations in the base gasoline), and for non-VOC-reformulated gasoline, 4.0 wt% (the maximum expected for ethanol at 10.0 vol% considering density variations in the base gasoline). The guidance further stated that EPA would make these changes in a future rulemaking but allow parties to use the adjusted maximums in the meantime. The maximum 3.2 wt% is 0.5 wt%

[2] U.S. Environmental Protection Agency, ''RFG/Anti-Dumping Questions and Answers,'' Question 1 of the ''Standards'' section, April 18, 1995. A copy of this document has been placed in the public docket for today's action and may be found on the TTNBBS (see ''Supplementary Information'' section of this notice).

greater than the 2.7 wt% maximum oxygen content allowed for VOC-controlled reformulated gasoline under the final rule; the difference of 0.5 wt% is consistent with raising the valid maximum oxygen content under the Simple and Complex Models from 3.5 wt% to 4.0 wt%.

As discussed earlier, the Agency is today proposing that the maximum oxygen content for VOC-controlled reformulated gasoline be the maximum allowed under the section 211(f) ''substantially similar'' provision and waiver provisions. (Currently, ethanol may be blended up to 10 volume percent and MTBE up to 15 volume percent.) EPA is proposing that the maximum oxygen content for non-VOC-controlled reformulated gasoline also be the maximum allowed under the section 211(f) ''substantially similar'' provision and waiver provisions rather than be capped at a specific oxygen content as in the final rule.[3] This would allow reformulated gasoline to contain ethanol up to the current legal maximum 10 volume percent and MTBE up to the current legal maximum 15 volume percent, without concern for the density of the non-oxygenated gasoline. Additionally, allowing the maximum oxygenate volumes (and thus maximum oxygen contents) specified in 211(f) would make this provision (40 CFR 80.41(g)(1)) consistent with the upper end of the valid range for oxygen in both the Simple and Complex models. As stated in the July 20, 1994 rulemaking, increasing the maximum oxygen value will have no adverse environmental impact.

In those cases where a state has requested the lower maximum oxygen content for its RFG, the Agency proposes that the oxygen maximum standard value be increased from the current 2.7 wt% to the maximum allowed under section 211(f), but not to exceed 3.2 wt% when ethanol is used. As mentioned above, 3.2 wt% oxygen is equivalent to about 7.7 vol% ethanol and is the highest maximum increase in oxygen content over 2.7 wt% that might be encountered due to variations in the base gasoline density. In practice, the Agency does not expect ethanol-containing blends certified under these provisions to contain more than 7.7 vol% ethanol, as there are tax credit and other deterrents to going higher than 7.7 vol% but lower than 10 vol% (which would exceed 3.2 wt% oxygen).

[3] This provision would only apply under the RFG simple model. Under the complex model, there would be no oxygen cap in the regulations. The maximum oxygen content allowed under § 211(f) would, of course, continue to apply to complex model RFG as well as all other gasoline.

Comments are requested on this aspect of today's proposal.

IX. Public Participation

EPA desires full public participation in arriving at its final decisions and solicits comments on all aspects of this proposal. Wherever applicable, full supporting data and detailed analysis should also be submitted to allow EPA to make maximum use of the comments. All comments should be directed to the EPA Air Docket, Docket A–95–29 (See **ADDRESSES**). See the **DATES** section for the deadline for submission of comments.

Any proprietary information being submitted for the Agency's consideration should be markedly distinguished from other submittal information and clearly labelled ''Confidential Business Information.'' Proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that it is not inadvertently placed in the docket. Information thus labeled and directed shall be covered by a claim of confidentiality and will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

X. Compliance with the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to examine the effects of their regulations and to identify any significant adverse impacts of those regulations on a substantial number of small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. In fact, today's proposals are designed to remove overly burdensome regulations and make it easier for refiners to use ethanol in reformulated gasoline, and thus to ensure market access for ethanol in reformulated gasoline.

XI. Administrative Designation

Pursuant to Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the executive order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this notice of proposed rulemaking is not a ''significant regulatory action''.

XII. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

XIII. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate; or by the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This action has the net effect of reducing burden of the reformulated gasoline program on regulated entities, as well as the States. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

XIV. Statutory Authority

The statutory authority for the actions proposed today is granted to EPA by Sections 211(c), (k) and 301 of the Clean Air Act, as amended; 42 U.S.C. 7545(c),(k), and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: September 27, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.41 is amended by revising paragraph (g) to read as follows:

§ 80.41 Standards and requirements for compliance.

* * * * *

(g) *Oxygen maximum standard.* (1) The per-gallon standards for maximum oxygen content, which apply to reformulated gasoline subject to the simple model per-gallon or average standards, are as follows:

(i) The standard shall be the maximum allowed under the provisions of section 211(f) of the Act; except that

(ii) The standard shall not exceed 3.2 percent by weight for ethanol within the boundaries of any state if the state notifies the Administrator that the use of an oxygenate will interfere with attainment or maintenance of an ambient air quality standard or will contribute to an air quality problem.

(2) A state may request the standard specified in paragraph (g)(1)(ii) of this section separately for reformulated gasoline designated VOC-controlled and reformulated gasoline not designated as VOC-controlled.

(3) The standard in paragraph (g)(1)(ii) of this section shall apply 30 days after the Administrator publishes a notice in the Federal Register announcing such a standard.

* * * * *

[FR Doc. 95–24583 Filed 10–4–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Chapter I

[CGD 95–073]

International Management Code for the Safe Operation of Ships and for Pollution Prevention, (ISM) Code

AGENCY: Coast Guard, DOT

ACTION: Notice of public meetings.

SUMMARY: The Coast Guard is planning four (4) public meetings to discuss the implementation of the International Maritime Organization (IMO) International management Code for the Safe Operation of Ships and for POLLUTION prevention (International Ship Management (ISM) Code). The ISM Code encourages the continuous improvement of safety management skills within the maritime industry. In keeping with the results of a Coast Guard review of its regulatory development process, the Coast Guard will hold these public meetings to provide the public an opportunity to comment and give input into the implementation of the Code.

DATES: The public meetings will be held from 9 a.m. until 3 p.m. as follows: On October 30, 1995, in Seattle, Washington; on November 1, 1995, in Long Beach, California; on November 13, 1995, in New Orleans, Louisiana; and on November 16, 1995, in New York City, New York. Those attending the public meetings should have available a photo identification card to meet entrance requirements for the building management at the meeting sites. Written material may also be submitted regarding this matter and must be received not later than November 29, 1995.

ADDRESSES: The public meetings will be held at the following locations: North Auditorium, 4th Floor, Jackson Federal Building, 915 Second Avenue, Seattle, Washington; the Boardroom, Port Authority Administration Building, 925 Harbor Plaza, Port of Long Beach, California; the Holiday Inn Downtown Hotel, 330 Loyola Avenue, New Orleans, Louisiana; and New York Port Authority Oval Room, 43rd Floor, 1 World Trade Center, New York City, New York. Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments will become part of this docket and will be available for inspection or copying at room 3406, Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Gauvin, Project Manager, Vessel and Facilities Operating Standards Branch (G–MOS–2), (202) 267–1181. This number is equipped to record messages on a 24-hour basis. Anyone wishing to make a presentation is requested to call this number and give the following information: docket number (CGD 95–073); name; company or organizational affiliation (if any); and the estimated amount of time needed for the comment.

SUPPLEMENTARY INFORMATION:

Background and Discussion

On November 4, 1993, the International Maritime Organization (IMO) adopted resolution A.741(18) entitled ''International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code).'' The objectives of the ISM Code are to improve safety at sea, to reduce the occurrence of human injury or loss of life, and to minimize environmental and property damage attributable to marine casualties. The ISM Code seeks to accomplish these objectives by encouraging the implementation of Safety Management Systems by shipping companies with oversight by national administrations, such as the U.S. Coast Guard.

Beginning in 1998, the ISM Code will become mandatory for vessels which operate in international trade to which the Safety of Life at Sea (SOLAS) convention applies. On July 1, 1998, the ISM Code will become mandatory for passenger ships, passenger high speed craft, oil tankers, chemical tankers, gas carriers, bulk carriers, and cargo high speed craft of 500 gross tons and greater. On July 1, 2002, the ISM Code will become mandatory for other cargo ships and self-propelled mobile offshore drilling units of 500 gross tons and greater. Until those dates, compliance with the ISM Code by owners of the various classes of vessels is voluntary.

The ISM Code represents the culmination of an evolving recognition within the maritime industry that the ''human element'' is a critical factor in preventing casualty or pollution incidents. Historically, the international maritime community has approached maritime safety from an engineering and technology perspective. International standards addressed equipment and design requirements. However, despite

these requirements, significant marine casualties continue to occur. The ISM Code attempts to reduce these occurrences by recognizing that ''human factors,'' defined as acts or omissions of personnel which adversely affect the proper functioning of a particular system, or the successful performance of a particular task, must be addressed in order to further reduce marine casualties and pollution.

The ISM Code acknowledges that the human element includes both vessel personnel and the company management infrastructure of the vessel's owner or operator. Decisions made ashore can be as important as those made at sea; and, therefore, the ISM Code seeks to ensure that every action, taken at any level within a company, is based upon sound understanding of the potential consequences on marine safety and pollution prevention. The IMO, in resolution A.647(16), cited two key elements needed to realize the objectives of the ISM Code. Those elements include a philosophical commitment to safety at the senior management level and an effective organizational infrastructure to implement and monitor a safety management program.

Under the ISM Code, a shipping company's Safety Management System must include the following functional requirements: (1) A safety and environmental protection policy; (2) instructions and procedures to ensure safe operation of ships and protection of the environment in compliance with relevant international and flag-state legislation; (3) defined levels of authority and lines of communication between, and amongst, shore and shipboard personnel; (4) procedures for reporting accidents and non-conformities with the provisions of the ISM Code; (5) procedures to prepare for and respond to emergency situations; and (6) procedures for internal audits and management reviews.

The Coast Guard may be required to promulgate implementing regulations when the ISM Code becomes mandatory. At present, U.S. certification is voluntary. Authorized classification societies currently issue Safety Management System certificates under the provisions of Navigation and Vessel Inspection Circular (NVIC) No. 2–94 (March 15, 1994). These certificates have neither force nor effect under U.S. law. They indicate only that a company and its vessels comply with the terms of the ISM Code as interpreted by NVIC 2–94, as determined by the authorized classification society. Implementing regulations would provide for Coast Guard examination of shipping companies and ships to which the ISM Code applies to determine their compliance. The Coast Guard would authorize the issuance of certificates to companies and ships found to be in compliance. Once the ISM Code comes into effect, port states around the world will check foreign flag vessels for compliance as part calls are made.

The Coast Guard is interested in receiving comments on the potential costs and benefits of this implementation and on the issues discussed in this notice. Specifically, the Coast Guard is interested in receiving comments on methods by which the Coast Guard can ensure effective compliance with ISM Code standards, while minimizing the burden and costs to the maritime industry.

Based on discussions with industry representatives, numerous questions have arisen which, when answered, should significantly assist in implementing the ISM Code. These questions address issues such as: which entities will conduct ISM Code inspections or surveys; the applicability of the ISM certification to various U.S. vessel types; the cost and time requirements for owners of various vessel types, operating on different routes/service, to implement the ISM Code; the viability of using third parties to complete ISM Code Certification; the need for incentives for companies which own vessels in domestic trade to be ISM Code certificated; whether Safety management Systems already developed and in place will be able to meet the requirements of the ISM Code and be certificated; how long will it take to set up a ISM Safety Management System and have the company office and it's vessels certificated; whether companies in domestic U.S. trade should be required to be ISM Code certificated; the effect of ISM Code certification on small companies; whether sample Safety Management Systems should be developed and made available to companies to facilitate Code implementation; and what the enforcement policy should be for companies and vessel that do not meet the deadlines for ISM Code certification.

ISM Code certification must be accomplished by July 1998, for most vessels. In light of this, these public meetings will provide an excellent opportunity for members of the maritime industry whose vessels must be certificated under the ISM Code, to address concerns and offer suggestions for Code implementation.

Dated: September 28, 1995.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–24672 Filed 10–4–95; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–64; RM–8453]

Radio Broadcasting Services; Ider, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition for rule making to allot FM Channel 254A to Ider, Alabama, as that locality's first local aural transmission service, as requested by Deborah M. Thompson (RM–8453), and supported by Sand Mountain Advertising Co., Inc. *See* 59 FR 34404, July 5, 1994. The proposal is denied based upon the inability of Channel 254A to comply with the requirements of Section 73.315 of the Commission's Rules to provide a 70 dBu signal over the proposed community of license. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 94–64, adopted September 22, 1995, and released September 29, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–24824 Filed 10–4–95; 8:45 am]

BILLING CODE 6712–01–F

Notices

Federal Register
Vol. 60, No. 193
Thursday, October 5, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 29, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W, Jamie L. Whitten Bldg., Washington, D.C. 20250, (202) 690–2118.

Revision—Emergency

÷ Food and Consumer Service

Federal Tax Refund Offset

Individuals or households; State, Local or Tribal Government; Farms; Federal Government; 507,650 responses; 59,611 hours

John Hitchcock, (703) 305–2427.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–24708 Filed 10–4–95; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Rocky Mountain Region: Colorado, Kansas, Nebraska, South Dakota, Eastern Wyoming; Legal Notice of the Opportunity to Comment on Certain Proposed Actions and of Decisions Subject to Notice and Comment

AGENCY: Forest Service, USDA.

ACTION: Notice; newspapers for legal notices.

SUMMARY: This is a list of those newspapers that will be used to publish notice of all decisions which are subject to appeal under 36 CFR 217, notice of the opportunity to comment on certain proposed actions pursuant to 36 CFR 215.5, and notice of decisions subject to appeal under the general provisions of 36 CFR part 215. As required at 36 CFR 215.5 and 215.9, such notice shall constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to public notice and comment and administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

EFFECTIVE DATE: Use of these newspapers for purposes of publishing the notices required under the provisions of 36 CFR part 215 shall begin October 5, 1995.

FOR FURTHER INFORMATION CONTACT: John P. Halligan, Regional Appeals and Litigation Coordinator, Rocky Mountain Region, Box 25127, Lakewood, Colorado 80225, Area Code 303–275–5148.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Rocky Mountain Region shall give notice of the opportunity to comment on certain proposed actions and of decisions subject to appeal pursuant to 36 CFR Part 215 in the following newspapers which are listed by Forest Service unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. The day after the publication of the public notice in the primary newspaper shall be the first day of the appeal filing period.

Decisions by the Regional Forester

The Denver Post, published daily in Denver, Denver County, Colorado, for decisions affecting National Forest System lands in the States of Colorado, Nebraska, Kansas, and eastern Wyoming and for any decision of Region-wide impact. In addition, notice of decisions made by the Regional Foresters will also be published in the *Rocky Mountain News,* Published daily in Denver, Denver, County, Colorado. Notice of decisions affecting National Forest System lands in the State of South Dakota will also be published in *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota. For those decisions affecting a particular unit, the newspaper specific to that unit will be used.

Arapaho and Roosevelt National Forests, Colorado

Forest Supervisor Decisions

The Denver Post, published daily in Denver, Denver County, Colorado.

District Ranger Decisions

Redfeather and Estes-Poudre Districts: *Coloradoan,* published daily in Fort Collins, Larimer County, Colorado.

Pawnee District: *Greeley Tribune,* published daily in Greeley, Weld County, Colorado.

Boulder District: *Boulder Daily Camera,* published daily in Boulder, Boulder County, Colorado.

Clear Creek District: *Clear Creek Courant,* published weekly in Idaho Springs, Clear Creek County, Colorado.

Sulphur District: *Granby Sky High News,* published weekly in Granby, Grand County, Colorado.

Grand Mesa, Uncompahgre and Gunnison National Forests, Colorado
Forest Supervisor Decisions

Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

District Ranger Decisions

Collbran and Grand Junction Districts: *Grand Junction Daily Sentinel,* published daily in Grand Junction, Mesa County, Colorado.

Paonia District: *Delta County Independent,* published weekly in Delta, Delta County, Colorado.

Cebolla and Taylor River Districts: *Gunnison Country Times,* published weekly in Gunnison, Gunnison County, Colorado.

Norwood District: *Telluride Times-Journal,* published weekly in Telluride, San Miguel County, Colorado.

Ouray District: *Montrose Daily Press,* published daily in Montrose, Montrose County, Colorado.

Pike and San Isabel National Forests Forest Supervisor Decisions

Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

District Ranger Decisions

San Carlos District: *Pueblo Chieftain,* published daily in Pueblo, Pueblo County, Colorado.

Comanche District: *Plainsman Herald,* published weekly in Springfield, Baca County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the *La Junta Tribune Democrat,* published daily in La Junta, Otero County, Colorado, and in the *Ark Valley Journal,* published weekly in La Junta, Otero County, Colorado.

Cimarron District: *Tri-State News,* published weekly in Elkhart, Morton County, Kansas.

South Platte District: *Daily News Press,* published daily in Castle Rock, Douglas County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the *High Timber Times,* published weekly in Conifer, Jefferson County, Colorado, and in the *Fairplay Flume,* published weekly in Fairplay, Park County, Colorado.

Leadville District: *Herald Democrat,* published weekly in Leadville, Lake County, Colorado.

Salida District: *The Mountain Mail,* published daily in Salida, Chaffee County, Colorado.

South Park District: *Fairplay Flume,* published weekly in Fairplay, Park County, Colorado.

Pikes Peak District: *Gazette Telegraph,* published daily in Colorado Springs, El Paso County, Colorado.

Rio Grande National Forest, Colorado Forest Supervisor Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

District Ranger Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

Routt National Forest, Colorado

Forest Supervisor Decisions

Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will also be used.

District Ranger Decision

Bears Ears District: *Northwest Colorado Daily Press,* published daily in Craig, Moffat County, Colorado. In addition, notice of decisions by the District Ranger will also be published in the *Hayden Valley Press,* published weekly in Hayden, Routt County, Colorado, and in the *Steamboat Pilot,* published weekly in Steamboat Springs, Routt County, Colorado.

Yampa and Hahns Peak Districts: *Steamboat Pilot,* published weekly in Steamboat Springs, Routt County, Colorado.

Middle Park District: *Middle Park Times,* published weekly in Kremmling, Grand County, Colorado.

North Park District: *Jackson County Star,* published weekly in Walden, Jackson County, Colorado.

San Juan National Forest, Colorado

Forest Supervisor Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

District Ranger Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

White River National Forest, Colorado

Forest Supervisor Decisions

The Glenwood Post, published Monday through Friday in Glenwood Springs, Garfield County, Colorado.

District Ranger Decisions

Aspen District: *Aspen Times,* published weekly in Aspen, Pitkin County, Colorado.

Blanco District: *Meeker Herald,* published weekly in Meeker, Rio Blanco County, Colorado.

Dillon District: *Summit Daily News,* published Monday thru Saturday in Dillon, Summit County, Colorado.

Eagle District: *Eagle Valley Enterprise,* published weekly in Eagle, Eagle County, Colorado.

Holy Cross District: *Vail Trail,* published weekly in Minturn, Eagle County, Colorado.

Rifle District: *Rifle Telegram,* published weekly in Rifle, Garfield County, Colorado.

Sopris District: *Valley Journal,* published weekly in Carbondale, Garfield County, Colorado.

Nebraska National Forest, Nebraska

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota for decisions affecting National Forest System lands in the State of South Dakota.

The Omaha World Herald, published daily in Omaha, Douglas County, Nebraska for decisions affecting National Forest System lands in the State of Nebraska.

District Ranger Decisions

Bessey District: *The North Platte Telegraph,* published daily in North Platte, Lincoln County, Nebraska.

Samuel R. McKelvie National Forest: *The Valentine Newspaper,* published weekly in Valentine, Cherry County, Nebraska.

Fall River and Wall Districts: *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota.

Pine Ridge District: *The Chadron Record,* published weekly in Chadron, Dawes County, Nebraska.

Black Hills National Forest, South Dakota and eastern Wyoming Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

District Ranger Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Bighorn National Forest, Wyoming Forest Supervisor Decisions

Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will be used (see listing below).

District Ranger Decisions

Tongue District: *Sheridan Press,* published daily in Sheridan, Sheridan County, Wyoming.

Buffalo District: *Buffalo Bulletin,* published weekly in Buffalo, Johnson County, Wyoming.

Medicine Wheel District: *Lovell Chronicle,* published weekly in Lovell, Big Horn County, Wyoming.

Tensleep District: *Northern Wyoming Daily News,* published daily in Worland, Washakie County, Wyoming.

Paintrock District: *Greybull Standard,* published weekly in Greybull, Big Horn County, Wyoming.

Medicine Bow National Forest, Wyoming Forest Supervisor Decisions

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

District Ranger Decisions

Laramie District: *Laramie Daily Boomerang,* published daily in Laramie, Albany County, Wyoming.

Douglas District: *Casper Star-Tribune,* published daily in Casper, Natrona County, Wyoming.

Brush Creek and Hayden Districts: *Rawlins Daily Times,* published daily in Rawlins, Carbon County, Wyoming.

Shoshone National Forest, Wyoming Forest Supervisor Decisions

Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

District Ranger Decisions

Clarks Fork District: *Powell Tribune,* published twice weekly in Powell, Park County, Wyoming.

Wapiti and Greybull Districts: *Cody Enterprise,* published twice weekly in Cody, Park County, Wyoming.

Wind River District: *The Dubois Frontier,* published weekly in Dubois, Teton County, Wyoming.

Lander District: *Wyoming State Journal,* published twice weekly in Lander, Fremont County, Wyoming.

Dated: September 29, 1995.

Elizabeth Estill,

Regional Forester.

[FR Doc. 95–24768 Filed 10–4–95; 8:45 am]

BILLING CODE 3410–11–M

Jaybird EIS, Tahoe National Forest, Yuba and Sierra Counties, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for proposed timber harvest, plantation thinning, fuels reduction, and wildlife habitat improvement projects for areas in the Brandy, Bridger, and Willow Creek watersheds in accordance with the requirements of 36 CFR 219.19. The projects areas are located within portions of T.18N, R.8 & 9E., and T.19N., R.8 & 9E., MDB&M.

The agency invites comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments should be made in writing and received by November 20, 1995.

ADDRESSES: Written comments concerning the project should be directed to Jean Masquelier, District Ranger, Downieville Ranger District, North Yuba Ranger Station, 15924 Hwy 49, Camptonville, CA 95922.

FOR FURTHER INFORMATION CONTACT: Bob Willour, Resource Officer, Downieville Ranger District, Camptonville, CA 95922, telephone (916) 478–6253.

SUPPLEMENTARY INFORMATION: There are about 2,000 acres being analyzed for projects within the Jaybird analysis area. It incorporates the land within the Brandy, Bridger, and Willow Creek watersheds, which all drain into Bullards Bar Reservoir. It is located just north of Camptonville, California. The area is dominated by mixed conifer and hardwood forest.

This project was chosen to derive needed wood fiber and to reduce fire risk. Watershed problems, fire hazards within a mixed land ownership landscape, forest health concerns, and wildlife habitat conditions represent some of the challenges and opportunities for improvements that will be looked at during this analysis. An EIS will be done because of the concern for water quality.

In preparing the environmental impact statement, the Forest Service will identify and analyze a range of alternatives for treatment of the dense stands of young trees that address the issues developed for these sites. One of the alternatives will be no treatment. Other alternatives will consider differing levels of plantation thinning, timber harvest, new road construction and reconstruction, fuel hazard reduction, and fish and wildlife habitat improvement projects. The needs of people and environmental values will be blended in a such way that the Jaybird analysis area would represent a diverse, healthy, productive, and sustainable ecosystem.

Public participation will be important during the analysis, especially during the review of the Draft Environmental Impact Statement. The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

Comments from other Federal, State, and local agencies, organizations, and individuals who may be interested in, or affected by the decision, are encouraged to identify other significant issues. Public participation will be solicited through mailing letters to mining claim owners, private land owners, and special use permittees within the downieville Ranger District boundaries; posting information in local towns; and mailing letters to local timber industries, politicians, school boards, county supervisors, and environmental groups. Written comments that have already been received will still be considered when analyzing alternatives and impacts. Continued participation will be emphasized through individual contacts. No public meetings are scheduled.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review approximately the middle of January, 1996. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviews of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Agnoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of the court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and

concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is expected to be available by early May, 1996. The responsible official, who is the District Ranger for the Downieville Ranger District, will document the decision and reasons for the decision in the Record of Decision.

Dated: September 19, 1995.

Jean M. Masquelier,

District Ranger.

[FR Doc. 95–24751 Filed 10–4–95; 8:45 am]

BILLING CODE 3410–11–M

Natural Resources Conservation Service

Conservation and Environmental Programs; Forestry Incentives Program; Implementation

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice.

SUMMARY: The NRCS is announcing its intention to adopt the existing policies contained in (7 CFR Part 701); for implementation of the Forestry Incentives Program (FIP), P.L. 95–313, 92 Stat. 365 as amended, and the Cooperative Forestry Assistance Act of 1978; until further notice.

DATES: Effective date: October 5, 1995.

ADDRESSES: Comments should be sent to the Conservation and Ecosystem Assistance Division (CEAD), Natural Resources Conservation Service, South Building, Post Office Box 2890, Washington, D.C. 20013, (202) 720–1845.

FOR FURTHER INFORMATION CONTACT: Lloyd E. Wright, Director, CEAD (202) 720–1845.

SUPPLEMENTARY INFORMATION: The Department of Agriculture Reorganization Act of 1994 (the Act), Pub. L. 103–354, 108 Stat 3178, authorized the establishment of NRCS and transferred responsibility for the FIP from the Consolidated Farm Service Agency to the NRCS, formerly the Soil Conservation Service (SCS). The NRCS has decided to adopt the policies stated in the current FIP regulations, (7 CFR Part 701). Consistent with the Act, however, all administrative, enforcement, monitoring, and management of the FIP shall be under the jurisdiction of the Chief, NRCS, or his designee. This notice does not relieve any person of any obligation or liability incurred under (7 CFR Part 701), nor otherwise deprive any person of any rights received or accrued under the provisions of (7 CFR Part 701).

Dated: September 28, 1995.

Paul W. Johnson,

Chief, Natural Resources Conservation Service.

[FR Doc. 95–24821 Filed 10–4–95; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Jan C. Koster, Doing Business as Advanced Computing Management, Also Known as Aqua City Mij

Relating Person Order

In the Matter of: Jan C. Koster, d.b.a. Advanced Computing Management a.k.a. Aqua City Mij; World Trade Center, Strawinskylaan 59, Amsterdam Postbus 72311, 1007 VA Amsterdam, The Netherlands, Respondents.

Whereas, on August 24, 1990, the Assistant Secretary for Export Enforcement, Qunicy M. Krosby, entered an order approving a Consent Agreement and issuing, in pertinent part, the following order:

First, that a civil penalty in the amount of $50,000 is assessed against [Jan C.] Koster, which shall be paid to the Department as follows: $25,000 shall be paid on or before December 31, 1990 and $25,000 shall be paid within one year of the entry of this Order. Payment shall be made in the manner specified in the attached instructions.

Second, that Jan C. Koster, individually and doing business as Advanced Computing Management and Aqua City Mij (hereinafter collectively referred to as Koster), World Trade Center, Strawinskylaan 59, 1077 XW Amsterdam Postbus 72311, 1007 VA, Amsterdam, The Netherlands, and all his successors, assignees, officers, partners, representatives, agents and employees, shall be denied, for a period of five years from the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

* * * * *

B. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which Koster is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

* * * * *

D. As authorized by Section 788.17(b) of the Regulations, the denial period herein provided against Koster shall be suspended for a period of five years beginning from the date of entry of this Order and shall thereafter be waived, provided that, during the period of suspension, Koster has not committed any violation of the [Export Administration] Act or any regulation, order under the Act.[1]

Whereas, on March 5, 1991, when Koster failed to pay the civil penalty as required by the Order, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), revoked the five-year period of suspension as provided by the August 24, 1990 Order, and implemented the five-year denial period against Koster, all of Koster's export privileges are denied until March 5, 1996, and the denial order extended to Koster's company, Advanced Computing Management, also known as Aqua City Mij;

Whereas, a June 30, 1995 Order to Multiline Computing Amsterdam and Blue Circle B.V. directing them to show cause why the sanctions of the March 5, 1991 Order entered against Koster should not be made applicable to them because of their relationship to Koster in the conduct of export trade or related services;

Whereas, no response was made to the Order To Show Cause which was served on the respondents and the related parties on July 11, 1995;

Whereas, the Administrative Law Judge has recommended, based on the evidence of record, that I enter an Order finding that the above persons are related to Koster by affiliation, ownership, control, positions of responsibility, or other connection in the conduct of export trade or related services;

Whereas, I find, based on the evidence of record, that each of the

[1]The Export Administration Act of 1979, as amended (currently codified at U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994)) (the Act), expired on August 20, 1994. Executive Order No. 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991)).

above persons is related to Koster by affiliation, ownership, control, positions of responsibility, or other connection in the conduct of export trade or related services;

It is therefore ordered:

That the ''Second'' ordering paragraph of the order of Assistant Secretary for Export Enforcement, Quincy M. Krosby, issued August 24, 1990, entered against Jan C. Koster be amended by adding the following as persons related to Koster:

Multiline Computing Amsterdam, Paasheuvelweg 26, 1105 BJ Amsterdam, The Netherlands and

Boompjes 543, Rotterdam, The Netherlands and

Blue Circle B.V., with addresses at Strawinskylaan 59, Amsterdam, The Netherlands and Wagenweg 47, Haarlem, The Netherlands.

Each of the above persons is therefore subject to the same sanctions as are imposed against Koster by the March 5, 1991 Order which continues in full force and effect.

This Order is effective immediately. A copy of this Order shall be served on each named related person and published in the Federal Register.

This constitutes the final agency action in this matter.

Dated: September 6, 1995.

John Despres,

Assistant Secretary for Export Enforcement.

[FR Doc. 95–24746 Filed 10–4–95; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 57–95]

Foreign-Trade Zone 73—BWI Airport, Maryland Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Maryland Aviation Administration, on behalf of the Maryland Department of Transportation, grantee of Foreign-Trade Zone 73, BWI Airport, Maryland, requesting authority to expand its zone to include an additional site in Baltimore, Maryland, within the Baltimore Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 27, 1995.

FTZ 73 was approved on November 19, 1981 (Board Order 180, 46 FR 58730, 12/3/81). The zone currently consists of: *Site 1* (15 acres)—within the 500-acre Air Cargo/Industrial Park Complex, Maryland Route 170 near Taxiway ''A''; *Site 2* (18 acres)—located at Maryland Route 176 near Taxiway ''T''; *Site 3* (4 acres)—within the Route 100 Industrial Park, 6905 San Tomas Road, Elkridge, Maryland; and, *Temporary Site* (22,400 sq. ft.)—located at 3620 Commerce Drive, Arbutus, Baltimore County, Maryland.

MAA is now requesting authority to expand its zone to include a site (29 acres) located at the Carroll Industrial Park, 2000 Washington Boulevard, Baltimore, Maryland. The park is owned by the Maryland Economic Development Corporation.

The multi-user site will be available for warehousing/ distribution activity. At the outset, Hoogewerff (USA), Inc., an operator of FTZ 73, will provide zone services.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 4, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 19, 1995).

A copy of the application and accompanying exhibits will be available for public inspection at the each of the following locations:

U.S. Department of Commerce, District Office, World Trade Center, 401 Pratt Street, Suite 2432, Baltimore, MD 21202

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: September 28, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–24807 Filed 10–4–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than October 31, 1995, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

Antidumping duty proceedings	Period
ITALY: Pressure Sensitive Tape (A–475–059)	10/01/94–09/30/95
JAPAN: Steel Wire Rope (A–588–045)	10/01/94–09/30/95
JAPAN: TRBs, Over 4-Inch (A–588–604)	10/01/94–09/30/95
JAPAN: TRBs, Under 4-Inch (A–588–054)	10/01/94–09/30/95
MALAYSIA: Extruded Rubber Thread (A–557–805)	10/01/94–09/30/95
PEOPLE'S REPUBLIC OF CHINA: Barium Chloride (A–570–007)	10/01/94–09/30/95
PEOPLE'S REPUBLIC OF CHINA: Cotton Shop Towels (A–570–003)	10/01/94–09/30/95
PEOPLE'S REPUBLIC OF CHINA: Lock Washers (A–570–822)	10/01/94–09/30/95
YUGOSLAVIA: Nitrocellulose (A–479–601)	10/01/94–09/30/95

Antidumping duty proceedings	Period
Suspension agreements	
KAZAKHSTAN: Uranium (A–834–802)	10/01/94–09/30/95
KRYGYZSTAN: Uranium (A–835–802)	10/01/94–09/30/95
RUSSIA: Uranium (A–821–802)	10/01/94–09/30/95
RUSSIA: Uranium (A–844–802)	10/01/94–09/30/95
Countervailing duty proceedings	
ARGENTINA: Leather (C–357–803)	01/01/94–12/31/94
BRAZIL: Certain Agricultural Tillage Tools (C–351–406)	01/01/94–12/31/94
INDIA: Certain Iron-Metal Castings (C–533–063)	01/01/94–12/31/94
IRAN: Roasted In-Shell Pistachios (C–507–610)	01/01/94–12/31/94
NEW ZEALAND: Certain Steel Wire Nails (C–614–701)	01/01/94–12/31/94
SWEDEN: Certain Carbon Steel Products (C–401–401)	01/01/94–12/31/94
THAILAND: Certain Steel Wire Nails (C–549–701)	01/01/94–12/31/94

In accordance with §§ 353.22(a) and 355.22(a) of the regulations, an interested party as defined by § 353.2(k) may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 19 CFR 355.22(a) of the Department's Interim Regulations (60 FR 25137 (May 11, 1995)), an interested party must specify the individual producers or exporters covered by the order for which they are requesting a review. Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of ''Initiation of Antidumping (Countervailing) Duty Administrative Review,'' for requests received by October 31, 1995. If the Department does not receive, by October 31, 1995, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

Dated: September 28, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–24809 Filed 10–4–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–412–602]

Notice of Final Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 5, 1995.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–3464, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On May 4, 1995, the Department published in the Federal Register the preliminary results of its 1992–93 administrative review of the antidumping duty order on certain forged steel crankshafts (crankshafts) from the United Kingdom (60 FR 22045). The review covers one manufacturer/exporter. The review period is September 1, 1992, through August 31, 1993. On June 5, and 12, 1995, both parties submitted their case and rebuttal briefs, respectively. There was no request for a hearing. On July 26, 1995, the Department requested comments from both parties regarding the issue of the 20 percent weight criterion it intended to use in making its product comparisons. On August 9, 1995, both parties submitted their comments. On August 22, 1995, both parties submitted rebuttal comments. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The final margin for United Engineering & Forging (UEF) is listed below in the section ''Final Results of Review.''

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

The products covered in this review are certain forged steel crankshafts. The term ''crankshafts,'' as used in this review, includes forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. The products are currently classifiable under items 8483.10.10.10, 8483.10.10.30, 8483.10.30.10, and 8483.10.30.50 of the Harmonized Tariff Schedule of the United States (HTSUS). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or more than 750 pounds are subject to this review. Although the HTSUS subheadings are provided for convenience and Customs purposes, our

written description of the scope of this proceeding is dispositive.

Such or Similar Merchandise

In determining similar merchandise comparisons, we considered the following physical characteristics, which appear in order of importance: (1) Twisted vs. untwisted; (2) number of throws; (3) forging method; (4) engine type; (5) number of bearings; (6) number of flanges; and (7) number of counterweights. We applied weight separately based on a range of plus or minus 20 percent of the weight of the U.S. model. We applied weight as we did to ensure that we would consider all of the matching criteria in making our product comparisons (see *Comment 1* in the ''Interested Party Comments Section'' of this notice). We did not consider cost as a matching criterion (see *Comment 2*).

Fair Value Comparisons

To determine whether UEF's sales of crankshafts from the United Kingdom to the United States were made at less than fair value, we compared United States price (USP) to foreign market value (FMV), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice.

United States Price

We calculated USP according to the methodology described in our preliminary results.

Foreign Market Value

As stated in the preliminary results, we found that the home market was viable for sales of crankshafts and based FMV on home market sales.

We calculated FMV according to the methodology described in our preliminary results.

For four U.S. products, we found no home market product comparisons after applying the model matching methodology, the contemporaneity test, and the difference-in-merchandise (difmer) test. For the four products, we based FMV on CV. We calculated CV based on the sum of the respondent's submitted cost of materials, fabrication, general and administrative (G&A) expenses, U.S. packing and profit.

We reduced G&A expenses for certain plant redundancy expenses because such expenses were already included in the cost of manufacture (COM) (see *Comment 6* for a further discussion).

In accordance with section 773(e)(1)(B) (i) and (ii) of the Act, we included the actual general expenses, which exceeded the statutory minimum of ten percent of the COM. We used the statutory minimum profit, which is eight percent of the sum of COM and general expenses, because the actual profit amount was less than the statutory minimum (see *Comment 7* for a further discussion).

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a). All currency conversions were made at the rates certified by the Federal Reserve Bank.

Interested Party Comments

Comment 1: Application of the Weight Criterion

The petitioner contends that when matching sales of U.S. to home market merchandise, the Department has always applied the weight criterion in its matching hierarchy only to avoid comparisons of models of greatly disparate weight. Moreover, the petitioner contends that the Department's application of the weight criterion in the preliminary results was flawed because the Department's methodology did not consider all matching criteria. Therefore, the petitioner supports the use of a 20 percent weight range in the matching hierarchy.

The respondent argues that the Department should not apply the weight criterion only to avoid comparisons of greatly disparate weight and should keep using the method from the preliminary results. The respondent argues that use of a 20 percent weight range would be arbitrary, too narrow, and would treat differences in weight erratically. The respondent further argues that if the Department must change the application of the weight criterion from the method used in the preliminary results, it should use weight differences only to ''break ties'' between models that are equally similar in terms of primary characteristics.

DOC Position

We agree, in part, with the petitioner. In past reviews, we applied the weight criterion to avoid comparisons of models that were ''greatly disparate'' in weight. See Final Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts from the United Kingdom (56 FR 5975, 5979, Feb. 14, 1991)(Second Review). We did not, however, define the term ''greatly disparate'' in those reviews. In the final results of this review, we sought to increase the predictability of our matching hierarchy by clarifying what we consider ''greatly disparate.''

In the preliminary results, we considered weight as the third matching criterion and applied the criterion by selecting the home market model that was closest in weight to the U.S. model. This was consistent with the matching methodology outlined in a February 1993 memorandum prepared during the third review, and in furtherance of our efforts to increase the predictability of our matching hierarchy. However, we then discovered two flaws in our methodology for applying the weight criterion, which compelled us to seek an alternative methodology to that used in the preliminary results.

First, we realized that in the preliminary results, by applying weight as the third criterion of a descending hierarchy and selecting the home market model that was closest in weight to the U.S. model, our methodology effectively nullified the remaining matching criteria (*i.e.*, forging method, engine type, bearings, flanges and counterweights). This problem would be avoided only in the rare instance where two or more home market models were identical in weight. Thus, our methodology in the preliminary results frustrated the proper operation of our matching hierarchy.

Second, we realized that simply choosing the home market model that was closest in weight to the U.S. model did not prevent us from comparing models that were greatly disparate in weight, because the methodology failed to address situations where all home market models were greatly disparate in weight compared to the U.S. model. In such cases, one home market model could be ''closest'' in weight to the U.S. model, but still greatly disparate. This would violate our established practice of not comparing models that are greatly disparate in weight. See Second Review (56 FR 5979). The 20 percent difmer test would not necessarily prevent such comparisons because, in past crankshafts reviews, we have found that the relatively high material costs of heavier crankshafts may be offset by the relatively high cost of producing the other physical differences in lighter crankshafts.

As a result, two products could appear on paper (*i.e.*, according to the difmer test) to be more similar than they actually were. *Id.*

Due to these problems, on July 26, 1995, we indicated to both interested parties that we were considering applying the weight criterion as a 20 percent weight range rather than by choosing the home market model that was closest in weight to the U.S. model. Under our proposed methodology, the weight of a home market model would have to be within 20 percent of the weight of the U.S. model to be

considered ''similar'' for purposes of the weight criterion. We also invited the interested parties to suggest an alternative methodology and explain why their proposed methodology would be more reasonable than our proposed 20 percent weight range.

We proposed the 20 percent weight range for two reasons. First, we wanted to define the phrase ''greatly disparate,'' and the only way to do so with any kind of predictability was to assign a specific value to the term. Second, we used a 20 percent range rather than any other percentage range because the Department uses a 20 percent range in similar circumstances when applying its difmer test. As discussed above, the function of the weight criterion in these reviews is similar to that of the difmer test, and ensures that we do not make unreasonable comparisons.

We disagree with the respondent's claim that the Department's 20 percent weight range treats differences in weight erratically. By applying the weight criterion as a range, we are simply setting an outside parameter for acceptable weight differences. Within that range, the Department applied the remaining criteria to find the most similar matches. If there was more than one potential home market match after applying the remaining criteria, the Department chose the home market model that was closest in weight to the U.S. model. Applying weight as a specific percentage range, and then choosing the model that is closest in weight if there is more than one potential match after applying the remaining criteria, makes the criterion's operation predictable, not erratic.

The Department would be treating differences in weight erratically if it were to apply the weight criterion only to choose the home market model that is ''closest'' in weight to the U.S. model, because in some cases the potential home market comparisons may be very close in weight to the U.S. model, and in other cases the potential home market comparisons may all be far from the weight of the U.S. model. Simply choosing the home market model that is ''closest'' in weight, without also setting an outside limit for acceptable weight differences, would thus treat differences in weight differently in analogous circumstances. The respondent's proposed solution of making weight the fifth criterion or using it only to ''break ties'' would not avoid this problem. Moreover, each of the respondent's proposed alternative methodologies would, like the Department's preliminary methodology, effectively nullify any remaining matching criteria.

We also disagree with the respondent's contention that a 20 percent range is too narrow. As discussed above, we solicited comments from the parties on our proposed methodology. If the respondent believed that a 20 percent range was too narrow, it had an opportunity to suggest a broader range and explain why that broader range would have been more appropriate than the Department's proposal. While the respondent suggests the range should have been ''much'' broader than 20 percent, it declined our invitation to quantify what that range should be.

Moreover, after asserting that the range should have been much broader than 20 percent, the respondent then asserted that any percentage ''cutoff'' would be inappropriate. While the respondent seems to believe that there is no point at which the differences in weight between the home market and U.S. models would be so great as to make comparisons ipso facto unreasonable, we disagree. If the Department were to accept the respondent's argument, we would be required to make ad hoc determinations of what constitutes a ''great disparity'' in weight each time we made a comparison. This would frustrate our intent to ensure greater predictability in our application of the weight criterion.

We also disagree with the respondent's argument that the Department has previously determined that a range approach would be inappropriate for comparing crankshafts. In the original investigation, we simply declined to group crankshafts according to size because crankshafts are not sold in specific sizes. Our methodology in this review does not create ''groups'' of U.S. and home market models; it merely establishes boundaries for comparing individual U.S. models to all potential home market comparisons.

Finally, we disagree with the respondent's assertion that our methodology is inconsistent with the Act and our prior determinations. First, the respondent claims that there are no compelling reasons to change our methodology from the preliminary determination, because there were no ''unreasonable'' matches in this review. As noted above, however, the methodology we applied in the preliminary results was flawed in several respects. Thus, the matches may not be those that are truly most similar when all of the criteria are considered. It would undermine our attempts to make our matching hierarchy more accurate and predictable if we were to continue applying that methodology in this review, only to change the methodology in a future review when the flaws manifested themselves in unreasonable matches.

Second, the respondent claims there is no evidence that our preliminary methodology was unpredictable, and that a 20 percent range will not increase predictability. We disagree. Our preliminary methodology, while ''predictable,'' was flawed; applying the weight criterion as a range will increase predictability without invalidating the remaining matching criteria.

Third, the respondent argues that applying the weight criterion as a 20 percent range will require the use of CV for certain models. However, as discussed below in *Comment 3*, the goal in establishing a model match methodology is not simply to yield the greatest number of matches, the goal is to identify matches of ''similar'' products. We have determined that products are not similar if the difference between the U.S. and home market weights are more than 20 percent; in such situations, resort to CV would be appropriate.

Finally, the respondent's argument that our methodology will permit the use of more than one home market comparison for a single U.S. model is incorrect. As discussed above, if there were two or more potential home market matches after applying each of the Department's matching criteria, we chose the model that was closest in weight to the U.S. model because that model was, objectively speaking, ''most'' similar to the U.S. model.

Comment 2: Excluding Certain Models from Use in Matching

The petitioner contends that the Department should have excluded, as potential matches, all home market crankshaft models that appeared to have been sold at prices below their COP. The petitioner argues that the Department has the information necessary for initiating a COP investigation in accordance with section 773(b) of the Act and should have done so. Furthermore, the petitioner argues that if the Department is applying the 90/60 rule and difmer test in order to limit the pool of possible home market comparisons, then the Department should also take into account whether models are sold at or above their costs of production.

The respondent contends that the Department should not disregard any sales of home market models when selecting its matches because no authority cited by the petitioner supports disregarding them in this case. The respondent maintains that: 1) the

petitioner never requested a COP investigation as set out in section 773(b) of the Act; and 2) the use of COP as a matching criterion is contrary to both the Department's practice and section 773(b) of the Act.

DOC Position

We agree with the respondent. We have rejected the petitioner's argument for initiating a COP investigation for the reasons stated below.

According to 19 CFR 353.31(c)(ii), in an administrative review, the Department will not consider any allegation of sales below the COP that is submitted by the petitioner more than 120 days after the date of publication of the notice of initiation of the review, unless a relevant response is considered untimely or incomplete. If the response is received more than 120 days after initiation, however, the Department may use its discretion in determining what constitutes a reasonable amount of time for the petitioner to make a sales below cost allegation.

In this case, on June 9, 1994, the petitioner submitted a letter expressing its concern that specific home market models appeared to be sold at below COP. We spoke with the petitioner's counsel on June 14, 1994, and asked whether the letter was a sales below cost allegation (see June 15, 1994, memorandum from Brian Smith to the file). Rather than answer the question, the petitioner's counsel simply urged the Department to consider cost when making its LTFV comparisons. The petitioner made a submission on that same day which stated, among other things, that it was not making a ''typical'' allegation of sales below cost. Because the petitioner said it was not making a typical allegation of sales below cost, the Department did not investigate whether initiation of such an inquiry would have been appropriate. We disagree with the petitioner's suggestion that the June 9, 1994, letter ''could have been'' considered a sales below cost allegation.

Even if the March 9, 1994 letter could have been considered an allegation of sales below cost, the letter did not contain sufficient information to support initiation of a COP inquiry. For example, the petitioner made no attempt to provide fixed cost information for the two specific models it mentioned in its letter. Rather, the petitioner merely claimed there was ''reason to question'' whether sales of these two models were made above the COP.

Moreover, if the petitioner's case brief was intended to represent such an allegation, the allegation was untimely, and could not serve as the basis for initiating a sales below cost investigation. In the Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, From the United Kingdom, 58 FR 3253, 3255–56 (Comment 2)(Jan. 8, 1993), the petitioner had access to the raw data necessary to support a sales below cost allegation, but chose not to make an allegation until it filed its case brief. The Department noted that the petitioner could have filed an allegation after receiving the respondent's supplemental response, and that the allegation would not necessarily have been considered untimely. Because the petitioner waited to make the allegation until it filed its case brief, the Department found the allegation to be untimely.

We disagree with the petitioner's argument that the Department should have self-initiated a COP inquiry based on the June 9, 1994 letter. As the CIT has stated,

> [G]iven the burdens placed on ITA by the statute it is not reasonable to expect ITA in every case to pursue all investigative avenues, even such important areas as less than cost of production sales, without some direction by petitioners. It should be remembered that cost of production need not be investigated in every case, but only where reasonable grounds are present. Part of whether ITA has ''reasonable grounds to believe or suspect'' that a less than cost of production analysis is needed is whether it has been requested.

Floral Trade Council v. *United States*, 704 F. Supp. 233, 236 (CIT 1988). In this case, the petitioner did not request a sales below cost investigation; in fact, it affirmatively stated that its June 9, 1994 letter was not a typical allegation. The CIT has stated that the Department ''may be relieved of its duty to utilize certain information potentially favorable to a party, if that party has acted in a manner which directs the investigation in another direction.'' *Floral Trade Council of Davis* v. *United States*, 698 F. Supp. 925, 926 (CIT 1988).

Finally, we disagree with the petitioner's argument that the Department should have considered cost as a factor in choosing between various home market models in making its FMV calculations, because cost is not a criterion for determining what is most similar merchandise under the statute. See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada, 59 FR Reg. 18791, 18793 (Apr. 20, 1994); Policy Bulletin 92/4, The Use of Constructed Value in COP Cases 3–4 (Dec. 15, 1992).

Comment 3: Improper Use of CV

The petitioner contends that the Department improperly used CV because it placed undue importance on the twisted/untwisted criterion. The petitioner argues that in the second administrative review, the Department indicated that all crankshafts were one ''such or similar'' category and that crankshafts would be compared if reasonable adjustments could be made for physical differences in merchandise. In this case, the petitioner argues that the Department resorted to CV even though there were untwisted home market models (which passed the difmer test) which the Department could have matched to the U.S. twisted model. The petitioner argues that the Department's resort to CV in this case is inconsistent with its clear preference for price-to-price comparisons found in its own regulations.

The respondent maintains that comparing twisted to untwisted crankshaft models is contrary to the law of this case. The respondent points out that in the second administrative review of crankshafts, the Department declined to match twisted and untwisted models and used CV as the basis for FMV because it could not adjust for the difference between twisted and untwisted crankshafts.

DOC Position

We agree with the respondent. We have not compared twisted with untwisted cranshafts and vice-versa because we cannot adjust for physical differences between twisted and untwisted crankshafts. In the original LTFV investigation, we examined the issue of whether a twisted crankshaft was sufficiently similar to a non-twisted crankshaft to allow comparison. See Final Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts from the United Kingdom, (52 FR 32951, 32952, 32954, September 1, 1987). In the Second Review, we revisited the issue. We determined in both cases that it was inappropriate to compare twisted with untwisted crankshafts. Furthermore, we concluded in the second review that we could not adjust for the physical differences between twisted and untwisted crankshafts.

We disagree with the petitioner's argument that the Department was unjustified, because of the statutory preference for price-to-price comparisons, in resorting to CV rather than match a twisted to an untwisted crankshaft. Section 773(a)(2) of the Act specifically provides that when neither identical merchandise nor similar

merchandise is available for comparison, the Department may resort to CV as FMV. The goal in establishing a model match methodology is not simply to set up a method that yields the greatest number of matches between U.S. and home market models; the goal, rather, is to set up a method that identifies matches of reasonably ''similar'' merchandise. The statute clearly permits the use of CV where the Department determines that there are no models in the two markets that constitute ''similar'' merchandise. Because the Department has determined that it would be inappropriate to compare a twisted crankshaft to an untwisted crankshaft, resorting to CV is justified.

Comment 4: Use of the CV Data

The petitioner argues that the Department cannot rely on certain COM data for two die numbers because the reported data is flawed. The petitioner argues that the Department should have sent a supplemental CV questionnaire for the two die numbers and then verified that data if it was to be used.

The respondent maintains that the COM data in question has been verified by the Department and is reliable.

DOC Position

We agree with the respondent. Contrary to the petitioner's allegation, the information necessary to calculate CV for the two die numbers in question was contained in the respondent's questionnaire response. We verified this information and have used it for purposes of the final results.

Comment 5: Treatment of the Difmer

The respondent contends that the Department should revise its calculation of the dumping margin by subtracting the difmer adjustment from FMV, rather than adding the difmer to the FMV. The respondent maintains that all of the home market products are more costly to produce than the U.S. products. Therefore, the respondent alleges that the Department should have subtracted the difmer from FMV instead of adding it to FMV. The respondent cites to the Import Administration Antidumping Manual, chapter 9, pages 21–22, (Antidumping Manual) in support of its argument.

The petitioner maintains that the Antidumping Manual states that the Department is to add difmer adjustments to FMV and this is what the Department has done in this case. Therefore, the petitioner maintains that the Department properly added the difmer adjustment to FMV in the SAS computer program.

DOC Position

We agree with the respondent. We have changed the SAS instructions in our computer program such that we now subtract the difmer from FMV. We have made this change because it is the Department's practice to decrease FMV by the difmer if the home market materials, labor and overhead costs are greater than the U.S. materials, labor and overhead costs. In the preliminary results, we incorrectly added the difmer amount to FMV in the SAS computer program.

Comment 6: Redundancy Expenses

The respondent alleges that the Department erroneously included certain plant redundancy expenses in its G&A calculation because these costs were already reported in its submitted cost of manufacturing.

The petitioner contends that all redundancy expenses should be included in calculating G&A expenses rather than UEF's submitted COM.

DOC Position

We agree with the respondent. We find that the respondent included certain plant redundancy expenses in its submitted COM (*see* pages 12–13 of the June 20, 1994, submission and cost verification exhibit 1). Therefore, we have reduced the G&A expense by the amount of plant redundancy expenses.

Comment 7: Profit

The respondent asserts that the Department miscalculated profit by excluding fixed overhead costs. According to the respondent, its home market profit with the adjustment for fixed overhead costs was less than the statutory minimum of eight percent. Therefore, the respondent maintains that the Department should apply the statutory minimum profit of eight percent.

The petitioner contends that the respondent's fixed overhead cost calculation and revised profit argument is untimely and unsupported. Thus, the petitioner maintains that the Department should not revise the respondent's profit in the final results.

DOC Position

We agree with the respondent. We have now applied the statutory minimum profit. Contrary to petitioner's claim, we find that the respondent demonstrated that its average home market profit was less than the statutory minimum of eight percent and that the argument for revising the profit calculation is not untimely (see August 18, 1994, Constructed Value Verification Report, p. 11 and the respondent's case brief).

Final Results of Review

As a result of the comments received, we have revised our preliminary results and determine that the following margin exists:

Manufacturer/exporter	Review period	Margin (percent)
UEF	9/01/92–8/31/93	0.02

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirement will be effective for all shipments of crankshafts from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for UEF will be zero because the rate is less than 0.50 percent and, therefore, *de minimis;* (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 6.55 percent, which is the amended ''all others'' rate from the LTFV investigation. It is not 14.67 percent, as was erroneously published in the preliminary results.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 29, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–24806 Filed 10–4–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany; Termination of Anticircumvention Inquiry of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of anticircumvention inquiry.

SUMMARY: On August 31, 1995, Inland Steel Bar Company and USS Kobe Steel Company, petitioners in this proceeding, withdrew their petition, filed on August 23, 1994, in which they requested that the Department of Commerce (the Department) initiate an investigation to determine whether imports of certain leaded steel products are circumventing the antidumping order issued against certain hot-rolled lead and bismuth carbon steel products from Germany. The Department is now terminating this anticircumvention inquiry.

EFFECTIVE DATE: October 5, 1995.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5831/4114.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1994, pursuant to section 781(b) of the Tariff Act of 1930, as amended, (the Tariff Act) and 19 CFR 353.29 (b) and (f), the Department received a request from petitioners to investigate whether imports of certain leaded steel products from the Netherlands are circumventing the antidumping duty order issued against certain hot-rolled lead and bismuth carbon steel products from Germany.

Petitioners alleged that Thyssen AG, a German steel producer, is shipping leaded steel billets to its wholly-owned subsidiary Nedstaal BV (Nedstaal), located in the Netherlands, hot-rolling the billets into bars and rods and then exporting them from the Netherlands to the United States.

On February 7, 1995, the Department published in the Federal Register a notice of initiation of the anticircumvention inquiry (60 FR 7166). Subsequently, petitioners withdrew their anticircumvention petition on August 31, 1995. Because withdrawal by petitioners does not unfairly burden the Department or other interested parties, we have determined that it is reasonable to terminate this anticircumvention inquiry.

Dated: September 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–24808 Filed 10–4–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–841]

Notice of Final Determination of Sales at Less Than Fair Value: Manganese Sulfate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 5, 1995.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch, Dorothy Tomaszewski or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3773; (202) 482–0631 or (202) 482–0922, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Final Determination

We determine that manganese sulfate from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination on May 9, 1995 (59 FR 25885, May 16, 1995), the following events have occurred:

On May 12, 1995, the Department issued an additional supplemental questionnaire to respondents China National Nonferrous Metals Import and Export Company (''CNIEC'') and its U.S. subsidiary, Hunan Chemicals Import and Export Company (''Hunan Chemicals''), Xian Lu Chemical Factory, and Yan Jiang Chemical Factory. The Department received responses and subsequent revisions to those submissions from respondents in June 1995.

Petitioner, American Microtrace Corporation, submitted clerical error allegations following the Department's preliminary determination. The Department found that clerical errors were made in the preliminary determination; however, these errors did not result in a combined change of at least 5 absolute percentage points in, and no less than 25 percent of, any of the original preliminary dumping margins. Accordingly, no revision to the preliminary determination was made (see Notice of Amended Preliminary Determinations of Sales at Less Than Fair Value: Antidumping Duty Investigations of Pure and Alloy Magnesium from the Russian Federation and Pure Magnesium from Ukraine, (60 FR 7519, February 8, 1995)).

In June and July 1995, we verified the respondents' questionnaire responses. Additional publicly available published information on surrogate values was submitted by petitioner and respondents on August 4, 1995, and comments from the respective parties were submitted on August 11, 1995. Petitioner and respondents filed case briefs on August 18, 1995, and rebuttal briefs on August 25, 1995.

Scope of Investigation

The product covered by this investigation is manganese sulfate, including manganese sulfate monohydrate ($MnSO_4H_2O$) and any other forms, whether or not hydrated, without regard to form, shape or size, the addition of other elements, the presence of other elements as impurities, and/or the method of manufacture. The subject merchandise is currently classifiable under subheading 2833.29.50 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the

HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (''POI'') is June 1, 1994, through November 30, 1994.

Best Information Available

As stated in the preliminary determination, we have based the duty deposit rate for all other exporters in the PRC (''the 'PRC-wide' rate'') on best information available (''BIA''). The evidence on record indicates that the responding companies may not account for all exports of the subject merchandise.

In the case of Hunan Chemicals, verification revealed that, for its sole POI sale to the U.S., there was no evidence that Hunan Chemicals knew at the time of its sale to its customer that the merchandise was destined for the United States. Therefore, we have not treated that transaction as a sale by Hunan Chemicals to the United States. Accordingly, Hunan Chemicals will be subject to the ''PRC-wide'' deposit rate for manganese sulfate. (see Comment 2, ''Interested Party Comments'' section of this notice).

Because information has not been presented to the Department to prove otherwise, other PRC exporters not participating in this investigation are not entitled to separate dumping margins. In the absence of responses from all exporters, therefore, we are basing the country-wide deposit rate on BIA, pursuant to section 776(c) of the Act. (See, e.g., Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From Ukraine (61 FR 16433, March 30, 1995).

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. As outlined in the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium (58 FR 37083, July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. In this investigation, we are assigning to any PRC company, other than those specifically identified below, the ''PRC-Wide'' deposit rate of 362.23 percent, *ad valorem*. This margin represents the highest margin in the petition, as recalculated by the Department for purposes of the final determination. In the preliminary determination, we adjusted the BIA rate by reassigning the value for ocean freight based on the highest reported ocean freight charge incurred by a responding company—CNIEC—because the surrogate value cited for ocean freight in the petition appeared to be aberrational (*e.g.*, the unit charge for ocean freight deducted from gross unit price equals 68 percent of the gross unit price). (See Calculation Memorandum for the Preliminary Determination of Sales at Less Than Fair Value: Manganese Sulfate from the People's Republic of China (59 FR 25885, May 16, 1995)). For the final determination, we determined CNIEC's reported ocean freight charges are based on non-market economy rates (see Comment 7, ''Interested Party Comments'' section of this notice). Therefore, we adjusted the PRC-wide rate, as recalculated in the preliminary determination, to reflect the market economy rate determined by the Department as the appropriate surrogate value for ocean freight in final margin calculation for CNIEC.

Separate Rates

CNIEC and Hunan Chemicals have each requested a separate rate. Because, as explained above, we determined that Hunan Chemicals had no reported sales to the U.S. during the POI, Hunan Chemicals is precluded from being considered for a separate rate, the request of this company will not be further analyzed (see Final Determination of Sales at Less Than Fair Value: Nitromethane from the People's Republic of China (59 FR 14834, March 30, 1994)).

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department uses criteria that were developed in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991) (''Sparklers'') and in Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China (59 FR 22585, May 2, 1994) (''Silicon Carbide''). Under the separate rates criteria, the Department assigns a separate rate only when an exporter can demonstrate the absence of both *de jure* [1] and *de facto* [2] governmental control over export activities.

CNIEC's business license indicates that it is owned ''by all the people.'' As stated in the Silicon Carbide, ''ownership of a company by all the people does not require the application of a single rate.'' Accordingly, CNIEC is eligible to be considered for a separate rate.

De Jure Control

CNIEC has submitted copies of the following laws in support of its claim of absence of *de jure* control: ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1988 (''1988 Law''); ''Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises,'' approved on August 23, 1992 (''1992 Regulations''); and the ''Temporary Provisions for Administration of Export Commodities,'' approved on December 21, 1992 (''*Export Provisions*''). The 1988 Law states that enterprises have the right to set their own prices (see Article 26). This principle was restated in the 1992 Regulations (see Article IX). The Export Provisions list those products subject to direct government control. Manganese sulfate does not appear on the Export Provisions list and is not, therefore, subject to the constraints of these provisions. The 1994 Quota Measure supersedes earlier laws dealing with the export of the named commodities. Manganese sulfate was not named in the 1994 Quota Measure and does not, therefore, appear to be subject to the export quota regulation of this measure.

The Department stated in Silicon Carbide that the existence of the 1988 Law and the 1992 Regulations support a finding that the respondents are not subject to *de jure* control either by the central government or otherwise. However, we found in Silicon Carbide

[1] Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies.

[2] The factors considered include: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (see Silicon Carbide).

and other reports (see ''PRC Government Findings on Enterprise Autonomy,'' in Foreign Broadcast Information Service-China-93–133 (July 14, 1993)) that laws shifting control from the government to the enterprises themselves have not been implemented uniformly. Therefore, the Department has determined that an analysis of *de facto* control is critical to determining whether respondents are, in fact, subject to governmental control.

De Facto Control

During verification, our examination of correspondence and sales documentation revealed no evidence that CNIEC's export prices are set, or subject to approval, by any governmental authority. That CNIEC has the authority to negotiate and sign contracts and other agreements independent of any government authority was evident from our examination of correspondence and written agreements and contracts. We also noted that CNIEC retained proceeds from its export sales and made independent decisions regarding disposition of profits and financing of losses (based on our examination of financial records and purchase invoices). Finally, we have determined that CNIEC has autonomy from the central government in making decisions regarding the selection of management, based on our examination of management election notices, staff congress election ballots and minutes from the last company election meeting. According to CNIEC's company constitution, the company president is elected by the staff congress. Examination of management documents and correspondence provided no evidence of involvement by the central or provincial government in CNIEC's management selection process. Further, there is no evidence in this proceeding that any exporters are subject to common control.

Conclusion

Given that the record of this investigation demonstrates a *de jure* and *de facto* absence of governmental control over the export functions of CNIEC, we determine that CNIEC should receive a separate rate.

Fair Value Comparisons

To determine whether sales by CNIEC of manganese sulfate from the PRC to the United States were made at less-than-fair value prices, we compared the United States price (''USP'') to the foreign market value (''FMV''), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice.

United States Price

USP for CNIEC was calculated on the same basis as in the preliminary determination. Certain adjustments were made to the CNIEC's reported U.S. sales, based on verification findings, as follows: reported quantities were changed for certain transactions; one sale was added and another reported sale was determined actually to be two sales; and no deduction for marine insurance was made since it was determined that this charge was not incurred. We also rejected CNIEC's reported ocean freight in favor of a surrogate freight rate (see Comment 7, ''Interested Party Comments'' section of this notice) For the one unreported sale discovered at verification, adjustments for freight charges and duty were made using the highest figures for any transportation charges reported by CNIEC as best information available (''BIA''). (See Calculation Memorandum, attached to the Concurrence Memorandum, on file in room B–099 of the Main Commerce Department Building, for details of adjustments made.)

Foreign Market Value

We calculated FMV based on Yan Jiang's and Xian Lu's factors of production cited in the preliminary determination, making adjustments based on verification findings. To calculate FMV, the verified factor amounts were multiplied by the appropriate surrogate values for the different inputs. We have used the same surrogate values as the preliminary determination with the exception of certain factors. The identities of certain factors were deemed proprietary by the Department and, therefore, their names are not disclosed in this notice. The two factors in question will be referred to as ''factor X'' and ''factor Z'' for the remaining sections of this notice.

For Xian Lu and Yan Jiang we used verified packing factor amounts to calculate packing cost for the final calculations.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are (1) at a level of economic development comparable to that of the non-market economy country, and (2) significant production of comparable merchandise. The Department has determined that India is the country most comparable to the PRC in terms of overall economic development and significant production of comparable merchandise. (*See* memorandum from the Office of Policy to the file, dated April 13, 1995.) To value factors of production, we have obtained and relied upon published, publicly available information wherever possible.

Verification

As provided in section 776(b) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

Comment 1: Dumping Margins Based on BIA

Petitioner asserts that the Department should calculate the dumping margins for CNIEC and Hunan Chemicals based on the highest margins alleged in the petition as BIA. First, petitioner notes that respondents failed to file questionnaire responses to section A for the responding companies within the deadline established by the Department and failed to request an extension before that deadline expired. Further, according to petitioner, the perpetual revision of the responses has reduced the credibility of the information presented in respondents' submissions.

Respondents contend that there is no legal basis in this case for the use of BIA to calculate the responding trading companies' respective margins. Respondents note that the Department accepted and verified the respondents' questionnaire responses. According to respondents, the minor deviations and discrepancies discovered at verification were well within the limits of what the Department accepts as correcting insignificant errors found at verification.

DOC Position

Given the special circumstances outlined in the Memorandum to the File dated June 8, 1995, the Department exercised its discretion to accept the questionnaire responses (19 CFR 353.31(b)(1)). Further, except for Hunan Chemicals' response, the discrepancies discovered at verification were not such that the overall reliability of the responses was called into question. Therefore, the Department is basing its final determination on verified information from questionnaire responses from CNIEC and supplier factories.

Comment 2: Hunan Chemicals' Status as Respondent

Petitioner contends that the Department has no basis for determining a company-specific margin for Hunan Chemicals. According to petitioner, evidence on the record for its only reported sale indicates that Hunan Chemicals did not know, at the time of sale, that the merchandise it sold to the third country trading company was ultimately destined for the United States. All documentary evidence on the record indicates that Hunan Chemicals only learned that the merchandise was destined for the United States at the time of shipment, after the sale had already been made.

Respondents argue that the Department should continue to treat Hunan Chemicals' only reported sale as a U.S. sale and, therefore, assign Hunan Chemicals a separate rate for the final determination because of the following evidence on the record: (1) The bill of lading for the shipment in question listed the destination as a U.S. port; (2) PRC Customs export statistics' printout of exports to the United States showed that this shipment was sent to the United States; and, (3) correspondence from a company in New York with respect to this shipment was dated before the issuance of this sales contract.

DOC Position

We agree with petitioner. Based on the evidence on the record, we determine that this transaction was not a U.S. sale made by Hunan Chemicals. The sales contract for the reported sale did not stipulate the ultimate destination. The customer listed on the sales contract was a non-U.S. trading company. The actual sales documents (*i.e.*, sales contract, invoice, bill of lading), sales records, or accounting records do not mention the name of the company with the New York address found on the facsimile correspondence dated before the issuance of the sales contract. Further, the sales correspondence up to and including the date of sale does not mention the identity of the U.S. customer or the ultimate destination as the United States. The terms of delivery on the sales invoice were not to the United States. The fact that the bill of lading lists the U.S. port as destination of the shipment does not prove that Hunan Chemicals knew the ultimate destination at the time of the sale because this shipping document was issued well after the date of the sales contract which established the date of sale in this case. The PRC Customs export statistics do not provide any supporting evidence as to the company's knowledge at the date of the sale that the destination of the shipment was the United States. Even though Hunan Chemicals cooperated in supplying the requested information and permitting verification, absence of a viable U.S. sale made by Hunan Chemicals gives the Department no choice but to reject the company as a respondent in this investigation. Therefore, based on the record of this investigation, the Department did not calculate a separate margin for Hunan Chemicals for the final determination. Accordingly, Hunan Chemicals will be subject to the ''PRC-wide'' rate.

Comment 3: Surrogate Value for Factor X

(*N.b.*, Due to the proprietary nature of this issue, the following discussion is presented in non-confidential form. A more detailed analysis of the interested parties' positions and the Department's position is given in the September 28, 1995, decision memorandum to the file.)

Petitioner asserts that the surrogate value for factor X from the Indian Minerals Yearbook (''Yearbook'') used in the preliminary determination is aberrational and should not be used in the final determination. In support of its assertion, petitioner (1) cites to past cases where the Yearbook value was not chosen as the surrogate value; (2) observes that the Yearbook value is significantly lower than other values on the record for comparable material, including a price quotation from a PRC supplier; and (3) notes that there is no evidence on the record of any company in India purchasing the material at the price listed in the Yearbook.

Moreover, petitioner argues that the type of material respondents claim to use is different from the type of material priced in the Yearbook. Based on these reasons, petitioner requests the Department to use publicly available published value information in the TEX Report (for a material that petitioner characterizes as similar to that used by the PRC producers) and adjust the price to account for any differences.

Respondents assert that the material used by the PRC producers is in fact the same material as priced in the Yearbook. Contrary to petitioner's claims, respondents contend that the Department has no basis for determining the Yearbook price as aberrational since the Yearbook price reflects a publicly available, published domestic price in the chosen surrogate country based on credible source used in past cases. Accordingly, respondents request that the Department use the Yearbook unit price as the appropriate surrogate value for factor X in the final determination.

DOC Position

We have determined to use the Yearbook price for valuing factor X. Contrary to petitioner's suggestion, the Yearbook has been used repeatedly by the Department as a reasonable source of publicly available public information for factor valuation. Additionally, information submitted by petitioner does not establish that the value is aberrational. Specifically, with the exception of one price provided by petitioner, all other prices apply to products which are less comparable to the input used by the PRC producers than the product described in the Yearbook. Hence, those values are not appropriate to value factor X; and, the evidence provided does not allow us to use them to test whether the Yearbook price is correct. With respect to the one price provided by petitioner that is for a comparable product, the information is not publicly available published information. Therefore, consistent with our policy (see Notice of Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Certain Carbon Steel Butt-Weld Pipe Fittings From the PRC (57 FR 21062, May 18, 1992)), we will give preference to the Yearbook price.

Further, a comparison of the Yearbook price to a non-market export price quotation for the comparable material, as petitioner suggested, cannot be considered a reasonable or meaningful test of whether a surrogate value is aberrational. It has been the Department's practice not to rely on prices set in non-market economies due to state controls imposed on prices, wages, currency and production as well as the absence of market forces in the economy. Petitioner asserts that a non-market economy price quotation would be an understatement of the market price due to price controls. However, the Department cannot be certain that the quoted export price is in fact an understatement due to the market distortions existing in a non-market economy.

Comment 4: Surrogate Value for Factor Z

(*N.b.*, Due to the proprietary nature of this issue, the following discussion is presented in non-confidential form. A more detailed analysis of the interested parties' positions and the Department's position is given in the September 28, 1995, decision memorandum to the file.)

Respondents argue that the Chemical Weekly price used to value factor Z in the preliminary determination is an

inappropriate surrogate value for the following reasons: (1) it includes selling and movement expenses for smaller quantity purchases not normally incurred in bulk purchases, and (2) it is for a different type of material. According to respondents, the PRC producers bought a different type of material in bulk quantities. While not considered publicly available published information, respondents suggest that a more appropriate surrogate value data for this material is a price quotation based on information that respondents obtained from the Department's US&FCS office in New Delhi and market research correspondence since those prices are for a more comparable material and reflect a unit price figure for bulk quantity purchases. Respondents also suggest that, if the Department does not decide to change the surrogate value, it should adjust the surrogate value used in the preliminary determination to reflect the actual quality of the material and further adjust the value to reflect a unit price exclusive of any selling/movement expenses that are normally included in the retail price from Chemical Weekly.

Petitioner counters that the Department's choice of a surrogate value for factor Z in the preliminary determination is appropriate because it is based on publicly available information from an Indian publication and has been accepted by the Department in past investigations as an appropriate surrogate value for factor Z. Petitioner asserts that the alternative suggested by respondents is not a preferred surrogate value under the Department's hierarchy because it stems from individuals' statements and single transactions—information which does not demonstrate that the Chemical Weekly price is in any way an ''incorrect'' or aberrational value for the material.

Further, petitioner argues that the Department should not make an adjustment for the difference in material type allegedly used by the PRC producers. Petitioner considers the disclosure of the specific type of material as new information since this information was not provided to petitioner until August 4, 1995, when it was disclosed in respondents' factor valuation submission. Therefore, petitioner urges the Department to reject respondents' arguments to adjust the surrogate value in the Chemical Weekly for differences in type and as best information available, to assume that the PRC producers value factor Z without adjustment.

DOC Position

We agree with petitioner. The Department verified that the PRC producers use a specific type of factor Z. Verification did not reveal the nature of the purchase arrangements or the production process for the input (nor was any such information on the record prior to verification). Further, there is no evidence on the record to indicate that the surrogate value from the Chemical Weekly is aberrational for purposes of this investigation. In fact, the type of material used by PRC producers corresponds to the common description of the material priced in Chemical Weekly. Therefore, for purposes of the final determination, we are using the preliminary determination's surrogate value from the Chemical Weekly without adjustment.

Comment 5: Packing Material Consumption and Surrogate Value

Petitioner requests that the Department reject respondents' data for packing and rely on the petition's packing data as BIA since verification revealed that the reported factor consumption for packing was substantially understated. In the event that the Department decides to base its final determination on the information submitted by respondents, it should use the verified packing materials usage factor and not the understated figure originally reported by respondents. Further, petitioner asserts that the Department should use the surrogate unit value for ''polypropylene bags'' based on information in Monthly Statistics of Foreign Trade of India. Petitioner notes that this surrogate value was used in past cases (see, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from PRC (59 FR 22585, May 2, 1994)) and respondents are in agreement with this choice of surrogate value for the packing materials (see respondents' August 11, 1995, submission on factor valuation).

Respondents alleged a discrepancy in the weight of the packing materials at verification of Xian Lu Chemical Plant, as noted in the corresponding verification report.

DOC Position

We have determined that the value for plastic bags (expressed in terms of weight) based on 1991–1992 UN Trade Statistics is the more appropriate surrogate value. Information concerning the exact type of plastic bag used by respondents was first presented to the Department in respondents' August 11, 1995, submission on publicly available published information for surrogate values and, therefore, is untimely and too late to be verified for purposes of the final determination. Further, information on the record does not indicate that the UN Trade Statistics data is an inappropriate basis for surrogate value. The UN Trade Statistics are the most recent, publicly available, published information suitable for valuing plastic bags in this investigation.

Further, as we note no discrepancy in the verified weight of the 25 kilogram plastic bag used at Xian Lu Chemical Plant, no change from the amount noted in the Department's verification report is warranted.

Comment 6: Surrogate Value for Unskilled Labor

Respondents argue that the surrogate labor rate from the ILO Yearbook used to value unskilled labor in the preliminary determination is inappropriate because it is an aggregate labor rate for all skill levels of labor in India. According to respondents, the Department should adjust downward the surrogate labor rate used in the preliminary determination using formulae applied in previous cases.

Petitioner counters that the Department cannot accept respondents' argument because there is no factual evidence on the record of this investigation to support such a proposed adjustment. Petitioner maintains that it is impossible to know whether the formula used in the previous cases would be applicable to the unique circumstances of the manganese sulfate industry in India, or whether it is specific to the products involved in those cases. Further, petitioner contends that respondents failed to provide complete and verifiable information regarding their usage of different types of labor. Accordingly, petitioner urges the Department to reject respondents' request.

DOC Position

We agree with petitioner. For purposes of the final determination, the Department is valuing unskilled labor using the Indian labor rate reported in the ILO Yearbook without adjustment. Respondents' proposed method of (1) assuming that the ILO Yearbook labor rate is an average, semi-skilled labor rate, and (2) adjusting this labor rate to reflect unskilled and skilled labor rates using certain ratio adjustment factors was applied by the Department in a particular investigation based on the specific record of that investigation (see Final Determination of Sales at Less Than Fair Value: Antidumping Duty

Investigation of Helical Spring Lock Washers from the People's Republic of China (''HSLW'') Concurrence Memorandum (September 20, 1993)). In another case, the Department has used the ILO Yearbook without adjustment (see, *e.g.*, Preliminary Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Certain Paper Clips from the PRC Calculation Memorandum (May 11, 1995), and Notice of Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Certain Paper Clips from the PRC (59 FR 1168, October 7, 1994)).

Additionally, there is no evidence on the record of this case on which to base the application of the method proposed by respondents. The manganese sulfate production process and industry in this investigation are not comparable to those examined in HSLW. Because the production processes and industries are different, the type of skilled and unskilled labor used may vary significantly and, consequently, may affect the wage adjustments in each case. Therefore, there is no reasonable basis for applying the HSLW's assumptions and formulae to the ILO Yearbook Indian labor rate used in this investigation.

With respect to petitioner's argument concerning the absence of verified information on labor amounts, although the total labor hours reported by the PRC producers were not verifiable due to record keeping deficiencies, the reported hours exceeded the labor hours given in the petition. Therefore, our decision to use the PRC producers' reported hours represents an adverse inference for purposes of the final determination.

Comment 7: Ocean Freight

Petitioner asserts that verification demonstrated that U.S. sales were shipped via a non-market economy carrier, China Ocean Shipping Company (''COSCO''). Petitioner requests that the Department revise the final margin calculations for CNIEC to use a market-economy ocean freight rate as a surrogate value instead of the reported ocean freight rates.

Petitioner further argues that the ocean freight rates provided by petitioner are not aberrational, and should be used in the final determination. Petitioner maintains that only its information is provided from a publicly available market-economy source, and representative of terms similar to those verified to have applied to CNIEC's shipments. Accordingly, petitioner also requests that the Department revise its preliminary determination calculation of the ''PRC-wide'' deposit rate by using market-economy ocean freight rates instead of the reported ocean freight used in the preliminary determination.

Respondents argue that CNIEC's reported ocean freight was verified as a market economy freight rate. According to respondents, the Department verified that CNIEC's U.S. subsidiary purchased ocean freight services in the United States from a U.S. company and paid in U.S. dollars.

DOC Position

We agree in part with petitioner. In NME proceedings, the Department's consistent methodology has been to determine whether a good or service obtained through a market-economy transaction is, in fact, sourced from a market economy rather than merely purchased in a market economy (see, *e.g.*, Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Ferrovanadium and Nitrided Vanadium from the Russian Federation (60 FR 27962, May 26, 1995)). Because the good or service is produced in a NME, the Department cannot rely on the transaction as a basis for valuation because the underlying costs and expenses are not market-based. Verification indicated that COSCO performed the service. Although CNIEC's U.S. subsidiary arranges ocean freight through a U.S.-based company, the company's costs for contracting ocean freight with COSCO, a NME provider (see, e.g., Notice of Final Results of Antidumping Administrative Review: Iron Castings from the PRC (56 FR 2742, January 24, 1991)), cannot be relied on unless found to be representative of market-economy freight rates. The record of this case does not indicate that the COSCO rates are representative of market economy rates and, thus, the rate charged to CNIEC's U.S. subsidiary cannot be used for purposes of the final determination.

When a service, such as ocean freight, is determined to be provided by a non-market carrier, it has been the Department's practice to use a surrogate rate from a market economy country to value that service (see, *e.g.*, Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Disposable Pocket Lighters from the PRC (60 FR 22361, May 5, 1995); Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Sebacic Acid from the PRC (59 FR 28053, May 31, 1994); and Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Sparklers from the PRC (56 FR 20588, May 6, 1991)).

Therefore, we have valued ocean freight using a surrogate, market-economy value based on international shipping rates.

Comment 8: Brokerage and Handling

Petitioner contends that foreign brokerage and handling should be deducted from USP. Further, these charges should be valued at market economy rates provided on the record by petitioner. Petitioner requests that the Department adjust the margin calculations to account for this movement charge and apply a market economy value for services a forwarder provides in the final margin calculations.

Respondents counter that CNIEC did not incur any separate foreign brokerage and handling charges. According to respondents, any foreign brokerage and handling charges incurred by CNIEC are subsumed in the freight rate.

DOC Position

We agree with respondents. No separate brokerage or handling charges were reported in respondents' questionnaire responses or discovered at CNIEC's verification. Accordingly, such charges were not valued or accounted for in CNIEC's final margin calculation.

Comment 9: Marine and Foreign Inland Insurance

Because verification revealed that marine insurance and foreign inland insurance were provided by non-market economy suppliers, petitioner requests that the Department use market economy surrogate rates, as provided in petitioner's July 7, 1995, submission, to value these two movement expenses, where appropriate.

Respondents argue that verification revealed that neither CNIEC nor its U.S. subsidiary obtained marine insurance for their manganese sulfate shipments within the POI and, therefore, petitioner's proposed surrogate value for marine insurance is inapplicable in this case.

DOC Position

Verification revealed no indication that marine insurance was incurred by CNIEC or its U.S. subsidiary; therefore, this expense is not considered for purposes of the final margin calculation. However, we did confirm that foreign inland insurance was obtained by CNIEC from a non-market provider and, therefore, we have valued this expense based on market-economy surrogate rates in the margin calculation.

Comment 10: Adjusted Calculation to Reflect Actual Working Days in India for Surrogate Labor Rate

Petitioner requests that, if the Department chooses to rely upon the reported labor factor amounts in the questionnaire responses, the Department adjust the factors to account for labor practices in India. According to petitioner, if the PRC producers report that their workers worked more hours than the total number of hours worked in India during a normal work week, the Department should value the excess hours at double the normal labor rate as ''overtime.''

Respondents assert that there is no basis under law, precedent or practice to value PRC producers' ''excess'' hours at double the rate the Department decides to use as its surrogate value based on labor practices in India. Further, respondents counter that there is no indication on the record that any of the PRC producers' employees work over the hours calculated based on Indian labor practices. Accordingly, respondents request that the Department reject such a request.

DOC Position

We agree with respondents. While the Department does use information on labor practices in India to convert daily, weekly, and monthly wage rates from India into hourly wage rates, it is not Department practice to apply the surrogate country's overtime policies in valuing NME labor. Further, because our questionnaire did not require NME producers to report potential ''overtime'' hours worked as a component of ''regular'' hours, there was no opportunity for this issue to be fully analyzed, verified, and commented upon by interested parties.

Critical Circumstances

In our preliminary determination, we found that critical circumstances existed for all non-responding trading companies, but not for Hunan Chemicals or CNIEC.

Under 19 CFR 353.16(a), critical circumstances exist if (1) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of this investigation; or the importer knew or should have known that the producer or reseller was selling the merchandise which is the subject of this investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise which is the subject of this investigation over a relatively short period.

In determining whether imports have been massive over a short period of time, 19 CFR 353.16(f) instructs consideration of: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports.

Further, 19 CFR 353.16(f)(2) states that imports will not generally be considered massive unless they have increased by at least 15 percent over the imports during the immediately preceding period of comparable duration.

In accordance with 19 CFR 353.16, we preliminarily determined that critical circumstances did not exist for CNIEC and Hunan Chemicals based on the following criteria: (1) The finding of no imputed knowledge of dumping to importers because the estimated dumping margins were less than 15 percent (the threshold where, as here, only ESP sales are involved) and (2) the adverse assumption, based on BIA, that massive imports of manganese sulfate occurred over a relatively short period of time. (See Preliminary Determination Notice of Sales at Less Than Fair Value: Manganese Sulfate from PRC (59 FR 25885, May 16, 1995)).

For the final determination, we continue, as BIA, to determine that critical circumstances exist for all non-respondent exporters. The ''PRC-wide'' margin of 362.23 percent for those exporters exceeds the 25 percent threshold for imputing a knowledge of dumping to the importers of the merchandise. In addition, we have adversely assumed, as BIA, a massive increase in imports from these non-respondent exporters. We, therefore, determine that critical circumstances exist for all non-respondent exporters in this investigation.

Since the preliminary determination, we have determined that Hunan Chemicals is not a respondent and will not be assigned a separate rate. Therefore, we extend to Hunan Chemicals the same BIA-based determination of critical circumstances applied to the non-responding trading companies.

Additionally, CNIEC submitted shipment information following the preliminary determination which has now been verified. While CNIEC's margin (32.48%) does indicate that importers knew, or should have known, that CNIEC's merchandise was being sold at LTFV prices, CNIEC's shipment data shows that there has been no massive increase in the shipments from CNIEC in the period following the filing of the petition. Accordingly, for CNIEC, we determine that critical circumstances do not exist.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of manganese sulfate from the PRC from all non-responding trading companies, that are entered, or withdrawn from warehouse for consumption, on or after February 14, 1995, which is the date that is 90 days prior to the date of publication of our notice of preliminary determination in the Federal Register. This retroactive suspension will now also apply to Hunan Chemicals. In addition, we are instructing Customs to suspend liquidation from the date of publication of this notice in the Federal Register for all entries of manganese sulfate from the PRC sold by CNIEC. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage	Critical circumstances
CNIEC	32.48	No.
''PRC-Wide'' Rate	362.23	Yes.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will within 45 days determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: September 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–24805 Filed 10–4–95; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether a Secretary of Commerce should issue a Certificate to the applicant. An original and five (5) copies of such comments should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as ''Export Trade Certificate of Review, application number 95–00006.''

Summary of the Application

Applicant: Water and Wastewater Equipment, Manufacturers Association (WWEMA), 101 E. Holly Ave., Suite 14, Sterling, Virginia 22170. Contact: Randolph J. Stayin. Telephone: (202) 289–1313.

Application No.: 95–00006.

Date Deemed Submitted: September 21, 1995.

Members (in addition to applicant): See Attachment I.

WWEMA seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

Products

Machinery, equipment, instrumentation, chemicals, supplies, systems, accessories, turnkey systems, and software development (as these items are used in the treatment of water and/or wastewater).

Services

A. Identification, conceptual prefeasibility, and feasibility assessments of residential, commercial, industrial, and municipal Products and water and/or wastewater treatment facilities for homeowners, businesses, companies, utilities, or foreign government entities;

B. Engineering and architectural services related to Products and/or to turnkey contracts that substantially incorporate Products;

C. Design and installation of water and/or wastewater treatment facilities and/or Products;

D. Project and construction management of water and/or wastewater treatment facilities;

E. Arranging or offering financing for investments in water and/or wastewater treatment facilities and/or Products, including lease, loan, shared savings arrangements, guaranteed lease or loans, and third party financing;

F. Providing bonded performance guarantees that guarantee a certain level of water and/or wastewater treatment as a result of the installation of water and/or wastewater treatment Products;

G. Servicing, training, and other services related to the sale, use, installations, maintenance monitoring, rehabilitation, or upgrading of Products or to projects that substantially incorporate Products;

H. All other services related to water and/or wastewater treatment.

Export Trade Facilitation Services (as they relate to the Export of Products and Services)

Consulting; international market research; insurance; legal assistance; accounting assistance; services related to compliance with foreign customs requirements; trade documentation and freight forwarding; communication and processing of export orders and sales leads; warehousing; foreign exchange; financing; liaison with U.S. and foreign government agencies, trade associations and banking institutions; taking title to goods; marketing and trade promotion; trade show participation; coordination and negotiation of the terms and conditions of participation in trade promotion activities such as trade shows, expositions, exhibitions, conferences or similar events; and negotiations with providers of transportation, insurance, exhibits and lodging in connection with such trade promotion opportunities.

Technology Rights

Patents, trademarks, service marks, trade names, copyrights (including neighboring rights); trade secrets; know-how; technical expertise; utility models (including petty patents); computer modeling; semiconductor mask works; industrial designs; computer software protection associated with Products, Services, industrial designs, first die proofs, design of die block impressions, inserts, and Export Trade Facilitation Services.

Export Markets

The Export Markets include all parts of the world except the United States (the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

A. To engage in Export Trade, in the Export Markets, WWEMA and/or one or more of its Members may:

1. Engage in joint selling arrangements for the sale of Products and/or Services in the Export Markets, such as joint marketing, joint negotiation, joint offering, joint bidding, and joint financing; and allocate sales resulting from such arrangements.

2. Establish export prices of Products and/or Services by the Members in Export Markets.

3. Discuss and reach agreements relating to the interface specifications and engineering of Products and/or

Services required by specific export customers, potential export customers, or Export Markets.

4. Refuse to quote prices for, or to market or sell, Products and/or Services in Export Markets;

5. Solicit non-Member Suppliers to sell such non-Member Suppliers' Products and/or Services, or offer such non-Member Suppliers' Export Trade Facilitation Services through the certified activities of WWEMA and/or its Members.

6. Coordinate with respect to:

(a) The development of water and/or wastewater treatment projects in Export Markets, including project identification, scientific and technical assessment, transportation and/or delivery, engineering, design, maintenance, monitoring, construction and delivery, installation and construction, project ownership, project operation, and transfer of project ownership;

(b) The installation and servicing of Products in Export Markets, including establishment of joint warranty, service, and training centers in such markets; and

(c) The operation of and maintenance services for water and/or wastewater treatment facilities, parts warehousing, and support services related to the foregoing.

7. License associated Technology Rights in conjunction with the sale of Products, but in all instances, the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with WWEMA or any other Member.

8. Engage in joint promotional activities aimed at developing existing or new Export Markets. Such promotional activities may include advertising, demonstrating, field trips, trade missions, reverse trade missions, and conferences.

9. Agree on the frequency, level of, duration, or other terms and conditions of participation in joint Export Trade Promotion activities conducted in Export Markets. Such activities may include trade shows for the purpose of promoting the industry's Products in Export Markets.

10. Enter into agreements wherein WWEMA and/or one or more Members acts in certain Export Markets as the Members' exclusive or non-exclusive Export Intermediary. The Export Intermediary shall be responsible for coordinating the level of participation and joint export trade promotion and facilitation activities by WWEMA and its Members, as well as for negotiating agreements with foreign government agencies, corporations, or trade associations concerning terms and conditions of participation, transportation, insurance, lodging, local transportation, and food services in connection with such joint promotional activities. When acting as an Export Intermediary, WWEMA shall make its services available to any Member on non-discriminatory terms.

11. Agree to refuse to attend any specific trade show, exposition, exhibition, or conference conducted in the Export Markets.

12. Establish and operate jointly owned subsidiaries or other joint venture entities owned exclusively by Members for the purposes of engaging in the Export Trade Activities and Methods of Operation herein, other than the licensing of associated Technology Rights pursuant to subparagraph (7) above. WWEMA and/or one or more of its Members may establish and operate joint ventures for operations in Export Markets with non-Members, including public-sector foreign corporations and other foreign government entities, and/or private sector foreign entities such as corporations. Non-Members engaging in such activities shall not receive protection under this Certificate of Review.

13. Enter into exclusive arrangements with an Export Intermediary, which arrangement may provide that such Export Intermediary may not represent any non-Member Supplier of Products and/or Services in specified Export Markets.

14. Agree not to export independently into specified Export Markets, either directly or through any other Export Intermediary or other party.

15. Agree that any information obtained pursuant to this Certificate shall not be provided to any non-Member.

16. For the transportation of Products, act as a shippers' association to negotiate favorable transportation rates and other terms for the transportation of Products with individual common carriers and individual shipping conferences.

B. WWEMA and/or one or more of its Members may exchange and discuss the following types of information as they relate solely to Export Trade and Export Markets:

1. Information (other than information about the cost, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies or methods) that is already generally available to the trade or public.

2. Information about sales and marketing efforts for Export Markets, activities and opportunities for sales of Products and Services in Export Markets, selling strategies for Export Markets, pricing in Export Markets, projected demands in Export Markets (quality and quantity), customary terms of sale in Export Markets, the types of Products available from competitors for sale in particular Export Markets and the prices for such Products, customer specifications for Products in Export Markets, and market strengths and economic and business conditions in Export Markets.

3. Information about the export prices, quality, quantity, sources, available capacity, and delivery dates of Products available from Members for export, provided however that exchanges of information and discussions as to Product quantity, sources, available capacity to produce, and delivery dates must be on a transaction-by-transaction basis and involve only those Members who are participating or have genuine interest in participating in each such transaction.

4. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by WWEMA and/or its Members.

5. Information about joint bidding, joint selling, or joint servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members.

6. Information about expenses specific to exporting to, and within Export Markets, including without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes.

7. Information about U.S. and foreign legislation, regulations and policies and executive actions affecting the sales of Products and/or Services in the Export Markets, such as U.S. Federal and State programs affecting the sales of Products and/or Services in the Export Markets or foreign policies that would affect the sale of Products and/or Services.

8. Information about WWEMA's and/or its Members' export operations, including without limitation, sales and distribution networks established by WWEMA or its Members in Export Markets, and prior export sales by Members (including export price information).

C. WWEMA and/or one or more of its Members may meet to engage in the activities described in paragraphs A through B above.

D. WWEMA and/or one or more of its Members may refuse to provide Export

Trade Facilitation Services to non-Members or refuse to participate in other activities described in paragraphs A through B above.

E. WWEMA and/or one or more of its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (such as prices and/or costs). If such Member elects to respond with respect to domestic activities, it shall respond directly to the requesting foreign government or its agent with respect to such information.

Definitions

1. ''Export Intermediary'' means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. ''Member'' means a person who has membership in WWEMA and who has been certified as a ''Member'' within the meaning of Section 325.2(1) of the Regulations.

3. ''Supplier'' means a person who produces, provides, or sells a Product, Service, and/or Export Trade Facilitation Service, whether a Member or non-Member.

Dated: September 29, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

Attachment I

WWEMA Member Companies

ABB Kent Meters, Inc., Ocala, Florida
A.O. Smith Harvestore Products, Inc., DeKalb, Illinois
Bailey-Fischer & Porter Company, Warminster, Pennsylvania
Capital Controls Co., Inc., Colmar, Pennsylvania
CBI Walker, Inc., Aurora, Illinois
Door-Oliver Incorporated, Milford, Connecticut
Enviroquip, Austin, Texas
G.A. Industries, Inc., Mars, Pennsylvania
Galaxy Environmental Corp., Warminster, Pennsylvania
General Signal Pump Group, North Aurora, Illinois
Gorman-Rupp Company (The), Mansfield, Ohio
Hycor Corporation, Lake Bluff, Illinois
I. Kruger, Inc., Cary, North Carolina
Infilco Degremont Inc., Richmond, Virginia
ITT Flygt Corporation, Trumbull, Connecticut
JCM Industries, Inc., Nash, Texas
Komline-Sanderson, Peapack, New Jersey
Parkson Corporation, Fort Lauderdale, Florida
Patterson Pump Co., Taccoa, GA
Smith & Loveless, Inc., Lenexa, Kansas
Temcor, Carson, California
Vulcan Industries Inc., Missouri Valley, Iowa
Wallace & Tiernan, Belleville, New Jersey
Water Pollution Control Corp., Brown Deer, Wisconsin
Zimpro Environmental, Inc., Rotschild, Wisconsin

[FR Doc. 95–24737 Filed 10–4–95; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 092795A]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board will hold public meetings.

DATES: The Council will meet on October 17, 1995, beginning at 6:00 p.m. The Council and ASMFC Board will meet on October 18, 1995, from 8:00 a.m. until 5:00 p.m.

ADDRESSES: The meetings will be held at the Radisson Hotel Philadelphia, 500 Stevens Drive, Philadelphia, PA; telephone: (610) 521–5900.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to review Amendment 7 to the Northeast Multispecies FMP and prepare possible comments, and to review the Scup FMP, hear recommendations and written comments, to decide if any changes need to be made to the FMP before it is adopted.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at (302) 674–2331 at least 5 days prior to the meeting dates.

Dated: September 29, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–24785 Filed 10–4–95; 8:45 am]

BILLING CODE 3510–22–F

[Docket No. 950925237–5237–01; I.D. 100295C]

RIN 0648–XX28

New Bedford Harbor Trustee Council

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for restoration ideas for New Bedford Harbor.

SUMMARY: NMFS, acting as Administrative Trustee, announces the intention of the New Bedford Harbor Trustee Council (Council) to request ideas for projects to restore natural resources that have been injured by the release of hazardous substances, including polychlorinated biphenyls (PCBs), in the New Bedford Harbor, MA, environment. Of particular interest to the Council are those projects that can be conducted prior to remediation or cleanup of the harbor environment. The ideas will be reviewed against criteria established by the Council and for legal and technical applicability. If accepted, it is possible that project ideas could form the basis for a later Council request for proposals to conduct specific restoration projects.

DATES: The Council will accept project ideas through November 20, 1995.

ADDRESSES: Project ideas will be accepted at the following location: New Bedford Harbor Trustee Council, c/o National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930, or New Bedford Harbor Trustee Council, 37 N. Second Street, New Bedford, MA 02740.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Coordinator, 508–281–9136.

SUPPLEMENTARY INFORMATION:

I. Background

New Bedford Harbor is located in Southeastern Massachusetts at the mouth of the Acushnet River on Buzzards Bay. Adjacent to the harbor are the communities of Acushnet, Dartmouth, Fairhaven, and New Bedford. It is an active port frequented by both commercial and recreational fishing vessels, as well as merchant vessels delivering produce for distribution throughout the Northeast.

New Bedford Harbor is contaminated with high levels of hazardous materials, including PCBs, and as a consequence is on the U.S. Environmental Protection Agency's (EPA) Superfund National Priorities List as well as being identified as the Commonwealth of Massachusetts' priority Superfund site. Hazardous materials containing PCBs were discharged directly into the Acushnet River estuary and Buzzards Bay and indirectly via the municipal wastewater treatment system into the same bodies of water. The sources of these discharges were electronics manufacturers who were major users of PCBs from the time their operations commenced in the late 1940's until 1977, when EPA banned the use and manufacture of PCBs.

PCBs are considered to be human carcinogens that can be introduced to humans through the eating of contaminated fish and shellfish. PCBs can also have adverse effects on natural resources such as shellfish, birds, and higher mammals. Birds exposed to PCBs have exhibited reproductive failure and birth defects. Some shellfish species will die after exposure to even small concentrations of PCBs. Some fish species exhibit adverse reproductive effects when exposed to PCBs and pose a danger when eaten by other natural resources such as birds.

Executive Order 12580 and the National Contingency Plan, which is the implementing regulation for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), designate(s) the Secretaries of Agriculture, Commerce, Defense, Energy, and Interior to be Federal Trustees for natural resources. Federal Trustees are designated because of their statutory responsibilities for protection and/or management of natural resources, or management of federally owned land. In addition, the governors of each state are required to designate a state Trustee.

For New Bedford, there are three natural resource trustees on the Council. They represent the Department of Commerce, the Department of the Interior, and the Commonwealth of Massachusetts. The Secretary of Commerce has delegated trustee responsibility to NOAA, with NMFS having responsibility for restoration. The Secretary of the Interior has delegated trustee responsibility to the Regional Office of Environmental Policy and Compliance. The Governor of Massachusetts has delegated trustee responsibility to the Executive Office of Environmental Affairs. Trustee responsibilities include assessing damages from the release of hazardous substances, pursuing recoveries of both damages and costs, and using the sums to restore, replace, or acquire the equivalent of the resources that were injured by the release.

In 1983, the Federal and state Trustees filed complaints in Federal District Court in Boston alleging causes of action under CERCLA against the electronic manufacturers for injuries to natural resources under their trusteeship that had resulted from releases of hazardous substances, including PCBs. The eventual outcome of the complaints was monetary settlement agreements with the defendants for: (1) EPA to fund the cleanup of the harbor; (2) the Trustees to restore the natural resources; and (3) the government to be reimbursed for funds expended. The Council was created as a result of the settlement agreements.

The Trustees are required to develop a restoration plan before settlement money can be spent on restoration projects. Such a plan will include a range of projects including near-term and long-term restoration efforts. Projects must restore, replace or acquire equivalent natural resources for those resources that were injured. ''Restore or restoration'' is the actions taken to return injured natural resources and/or services to their baseline or comparable condition. ''Replacement'' is the substitution of an injured resource with a resource that provides the same or substantially similar services. ''Acquisition of the equivalent'' means obtaining natural resources the trustees determine are comparable to the injured resource. The Trustees' primary task is to determine how best to restore the injured natural resources and they are seeking the assistance of the public in this process.

The geographic scope of the Council's actions is the ''New Bedford Harbor environment'' (Figure 1). The Council defines the New Bedford Harbor environment as the area encompassed by the Acushnet River watershed which extends west into Dartmouth, east into Acushnet and Fairhaven, and from the north extending south to include the New Bedford Reservoir and the City of New Bedford into Buzzards Bay extending out to the area designated as Fishing Area III. The watershed is defined as the entire surface drainage area that contributes water to the Acushnet River.

CERCLA defines natural resources as including land, fish, wildlife, biota, air, water, groundwater, drinking water supplies or other resources under the control or management of the United States or any state. Natural resources within the New Bedford Harbor environment having a high probability of injury include fish, shellfish, other marine organisms, birds, marine sediment and the water column. The fish species include winter flounder, tautog, scup, mackerel, silverside, mummichog and American eels and herring. Shellfish injured through the release of PCBs include mussels, clams, quahogs, oysters, various species of crabs and lobster. Other organisms such as amphipods, diatoms and copepods that contribute to the food chain have been impacted and can serve as a means for further transmission of PCBs.

Federal restoration actions require adherence to the National Environmental Policy Act (NEPA). NEPA requires the development of an environmental assessment or environmental impact statement (EIS) that analyzes the effects of the proposed Federal action(s) on the environment. In a document published in the Federal Register (60 FR 10835, February 28, 1995), the Council announced its intention to prepare an EIS and its initiation of a public process to determine the scope of issues under consideration.

The Council has completed a series of public meetings that informed the communities of the Council's efforts, requirements and legal constraints in restoring injured natural resources. During these meetings, several projects were suggested for consideration. Some of these projects could possibly be accomplished in the near term and the Trustees are seeking to continue the NEPA scoping process by identifying the universe of projects for consideration. The focus of this request is for ideas for projects that can be accomplished prior to completion of the cleanup actions being conducted by EPA. EPA has been dredging parts of the Acushnet River/New Bedford Harbor to remove sediments containing the highest levels of PCB contamination. The next phase is for EPA to determine the best means to clean up remaining contamination in other parts of the river/harbor/bay. The method chosen for cleaning up the contamination could impact restoration projects if those projects are undone by EPA's actions. For example, if the Trustees conduct a restoration project in an area which EPA later dredges or modifies through construction, it could result in the destruction of the project. Recognizing this, the Trustees are seeking ideas for projects that could be accomplished before cleanup is complete, but would not be harmed by EPA's cleanup actions.

Projects that would require waiting for EPA's actions or would be accomplished in the long-term are welcome as well. Submission of these project ideas would assist the Trustees in planning for future actions. The same criteria and evaluation method will be used for these long-term project ideas as well as all other project ideas.

There may be ideas for projects that address emergency restoration which could be accomplished on a much faster basis. Emergency restoration is described in CERCLA as actions taken to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources. If the Trustees determine that such an emergency exists, project funding could occur before the approval of a restoration plan or EIS. The Council will determine the most appropriate means of implementing such an idea, such as through further procurement solicitations.

Project ideas will be accepted by the Council until November 20, 1995. All individuals or groups are invited to participate in this phase of the idea solicitation process. Assistance is available at either Council office (see **ADDRESSES**) if further explanation or guidance is needed on what the Council is requesting, restoration concepts, or the method of submission.

II. Restoration Priorities

From the list of resources identified as having a high probability of injury, and applying what is known about the resources injured within the New Bedford Harbor environment, the following list has been identified as proposed priorities for restoration of injured natural resources. The list includes those areas or resources of the New Bedford Harbor environment that the Trustees have proposed so far as likely candidates for restoration. Through the scoping process and through public input, other restoration priorities may be determined.

1. *Marshes or wetlands.* Projects under this priority could include, but are not limited to, restoration activities including transplanting marsh grasses, enhancing or creating marshes or wetlands.

2. *Recreation areas.* Project areas could include, but are not limited to restoration of beaches and parkland, activities to enhance access such as boat ramps or landings, and shoreline cleanups.

3. *Water column.* Examples of projects that restore the water column to its pre-PCB condition include grit or sediment removal.

4. *Habitats.* Restoration of habitats could include projects to restore or enhance fish and shellfish habitats or submerged aquatic vegetation.

5. *Living resources.* Living resources include the fish species, shellfish species and anadromous fish species that have been injured through the release of hazardous materials. Activities that have been suggested include aquaculture, transplants, bottom culture, and enhancement of other species.

6. *Endangered species.* Endangered species include birds such as roseate terns that have been injured by PCBs. Project ideas should attempt to meet these priorities but respondents are not limited to these areas alone. As part of the scoping process, new priorities can be identified and incorporated into the restoration planning process provided that they meet legal requirements, technical feasibility and selection criteria.

III. How to Submit Ideas

This is not a formal solicitation for contracts, rather it is a request for ideas that could eventually lead to an additional solicitation that may result in funding awards or interagency transfer of funds. Depending on the activity involved, the funding award could be a grant, a contract, or, if appropriate, the work could be performed by Federal or state agencies. Please note that the type of submission expected under this solicitation for restoration ideas is significantly different from that for Federal assistance programs.

Respondents should note that once an idea has been submitted, the idea becomes public domain. Both CERCLA and NEPA require public comment before formal adoption of a restoration plan or EIS. This can only be accomplished by revealing to the public the ideas that have been submitted. If the idea is chosen and then a solicitation is conducted for accomplishing that idea, the respondent loses all proprietary privilege to that idea. There remains the possibility that an idea may be implemented, after public review (see IV.B.1 below), through a sole source contract if the idea meets procurement criteria for such an award. Respondents who are concerned about revealing proprietary interests or methods should only present enough information to provide the Council with an understanding of the idea.

A. Eligible Submissions

During this phase, all individuals are eligible to submit ideas and all submissions are welcomed and encouraged. Respondents are asked to evaluate their idea(s) against criteria proposed by the Council. Unless modified through the result of this solicitation or by public comment, the criteria are expected to be used throughout the restoration process.

Assistance from Council employees is available by telephone or through meetings. Assistance will be limited to such issues as the Council's goals, restoration priorities, selection criteria, application procedures, and responding to questions regarding completion of application forms. Assistance will not be provided for conceptualizing, developing or structuring proposals. Information can be obtained at the offices of the Council (see **ADDRESSES**).

B. Duration and Terms of Funding

Under this solicitation, no actual awards of funding will occur. Rather, the solicitation will result in prioritization by the Council, and through public review and comment, of project ideas for a further solicitation. The Council has a fixed amount of money to implement restoration projects. In determining which project ideas to implement, an important consideration is the cost of the project. Estimated cost information allows the Council to develop a spending plan for future years and allows both the public and the Council to determine how many project ideas can actually be funded.

In describing the project idea, respondents should consider whether funding would be needed for a single or multi-year basis. This information will in no way affect consideration of the merits of the proposal but instead will assist the Council in its planning.

Since this is only a solicitation for project ideas, publication of this announcement does not obligate the Council to award any specific grant or contract or to obligate any part or the entire amount of funds available.

C. Costsharing

One way of extending the fixed amount of money the Council has to work with is through costsharing. It is not required that project ideas contain costsharing and this information will not be considered in the technical evaluation of proposals. However, the Council does encourage respondents to think about costsharing, and if it is appropriate for a project idea, to discuss within the idea the degree to which costsharing may be possible. If costsharing is proposed, the respondent is asked to account for both the Council and non-Council amounts. This information will allow the Council to better plan future expenditures.

D. Format

The forms described are available from the Council's offices (see **ADDRESSES**).

1. *Project idea summary*: An applicant must complete ''Request for Restoration Ideas'', Project Summary, for each project. This form is required in addition to the project narrative described below.

2. *Project idea budget*: Since this is a solicitation of ideas and not a competitive bidding process for work to be performed, a project budget is not required. However, the Council requests that a cost estimate be provided in order to better plan for a proposed allocation of available funds. In determining the estimate for total project cost, the respondent should take into account direct costs, indirect costs, and any costsharing. Fees or profits should not be included in the estimated budget.

The total costs of the project idea consist of all costs incurred in accomplishing idea objectives during the life of the project.

3. *Project idea narrative description*: The project idea should be completely and accurately described, as follows:

a. *Project idea goals and objectives*: State what the proposed project idea is expected to accomplish.

b. *Project idea statement of work*: The statement of work is an action plan of activities to be conducted during the period of the project idea. The respondent should provide a narrative describing the work to be performed that will achieve the Council goals, priorities and criteria. In developing the statement of work, the respondent should include the work, activities, or procedures to be undertaken. The respondent should include the types of individuals expected to perform such work.

c. *Federal, state, and local government activities*: List any Federal, state or local government programs or activities that this project idea would affect, if known, including activities under Massachusetts Coastal Zone Management Plans and those requiring consultation with the Federal Government under the Endangered Species Act and the Marine Mammal Protection Act. Describe the relationship between the project idea and these plans or activities.

d. *Project idea evaluation criteria*: Respondents should describe how the project idea would address the criteria contained in IV.A.2.

IV. Evaluation Criteria and Selection Procedures

A. Evaluation of Restoration Project Ideas

1. *Consultation with interested parties*: The Council will evaluate ideas in consultation with Federal trust agencies, Commonwealth of Massachusetts trust agencies, other Federal and state agencies, the Council's Public Advisory Committee, and others outside the Federal and state trust agencies who have knowledge in the subject matter of the project ideas or who would be affected by the project ideas.

2. *Technical evaluation criteria*: The Council will solicit technical evaluations of each project idea from appropriate private and public sector experts. Point scores will be given to project ideas up to the maximum value shown, based on the following evaluation criteria:

(a) Project ideas must restore the injured natural resources and associated activities of the area. The idea will be evaluated on whether it restores, replace or acquires the equivalent natural resources that were injured as a result of the release of hazardous materials, including PCBs, in the New Bedford Harbor environment. (25 points)

(b) Priority will be given to project ideas within the New Bedford Harbor environment, however, project ideas within the affected marine ecosystem that have a direct, positive impact on the harbor environment will be considered. Project ideas that are outside of the New Bedford Harbor environment will be considered provided that they restore injured natural resources within the New Bedford Harbor environment. (15 points)

(c) Priority will be given to project ideas that give the largest ecological and economic benefit to the greatest area or greatest number of people affected by the injury. The Council is seeking project ideas that will provide the greatest good. A project idea will be evaluated on the basis of whether it provides positive benefits to a more comprehensive area or population. Project ideas that benefit a particular individual rather than a group of individuals would be scored lower under this criterion. (15 points)

(d) Ecological or economic effects of the project ideas should be identifiable and measurable so changes to the New Bedford Harbor environment can be documented. The idea will be evaluated on whether it has discrete quantifiable results so that a determination can be made on its success or failure. (10 points)

(e) Preferred project ideas are those that employ proven technologies that have high probabilities of success. In evaluating a project idea, the reviewers will determine the likelihood of success based on the method being proposed. To assist in this evaluation, the respondent should provide information on whether the technique has been used before and whether it has been successful. (10 points)

(f) Project ideas should be cost effective. The justification and allocation of a project's budget in terms of the work to be performed will be evaluated. Project ideas which would result in high implementation costs will be taken into account. (Note: No awards will directly result from this solicitation for ideas.) (10 points)

(g) Project ideas should enhance the aesthetic surroundings of the harbor environment to the greatest extent possible, while acknowledging the ongoing industrial uses of the harbor. The extent that a project idea recognizes the multiple number of uses and the project idea's impacts on those uses will be evaluated as well as the project idea's ability to enhance the overall beauty of the harbor environment. (5 points)

(h) Project ideas should ultimately enhance the public's ability to use, enjoy, or benefit from the harbor environment. Besides a project idea's success at restoring natural resources, it will be evaluated on the basis of collateral gains in the public's ability to utilize the harbor environment. (5 points)

(i) Project ideas should provide an opportunity for community involvement that should be allowed to continue even after the Council's actions have ended. Project ideas will be evaluated on whether the public can be involved in various facets after the Council has completed its funding and the project is completed. (5 points)

3. *Emergency restoration criteria*: In addition to the criteria listed above, project ideas that are considered to be emergency restoration may be funded earlier. See B.3. below. Emergency restoration project ideas are those that: (a) require action to avoid an irreversible loss of natural resources, or (b) prevent or reduce any continuing danger to natural resources.

4. *Project idea ranking*: Utilizing the numerical scores resulting from the technical evaluation, described at IV.A.2. above, project ideas will be ranked in order of highest score to lowest score. Project ideas scoring the highest will be considered as ''preferred'' alternatives, with the other

ideas as alternatives. The ranking is used to provide guidance to the Trustees, but is not controlling, and can be modified through further review by the Council and the public. Project ideas that fail to meet criterion (a) may be excluded from further consideration though respondents may be provided other opportunities through later Council solicitations.

B. Selection Procedures and Project Funding

After project ideas have been evaluated and ranked, the review team will develop recommendations for preferred projects. Of particular interest will be those project ideas that address emergency restoration that can be done immediately. These recommendations will be submitted to the Council which will review the recommendations, accept or modify the recommendations, and determine the approximate number of project ideas it expects to undertake. The Council will determine the most appropriate means of implementing such ideas, such as through further procurement solicitations.

1. *Public review*: Once a determination is made on the preferred project ideas, the number of project ideas to be funded, and whether emergency restoration projects exist, the Council will hold public hearings, publish a document in the Federal Register, and initiate a 30-day public comment period to receive public comment on the Council's recommendations. The Council will consider the public comments in making its final recommendations for funding.

2. *Project solicitation*: Upon the Council's final recommendations, and the completion of restoration planning and NEPA documents, the Council will solicit restoration projects for the preferred alternatives. The solicitation will be a formal request following the appropriate contract or grant procedures. The projects ultimately selected could be awarded to private entities, commercial firms, educational institutions or local, state or Federal agencies.

3. *Emergency restoration*: If projects are found that address emergency restoration, the Council may solicit restoration projects prior to the completion of restoration planning and NEPA documents. The solicitation will be a formal request following the appropriate contract or grant procedures.

Classification

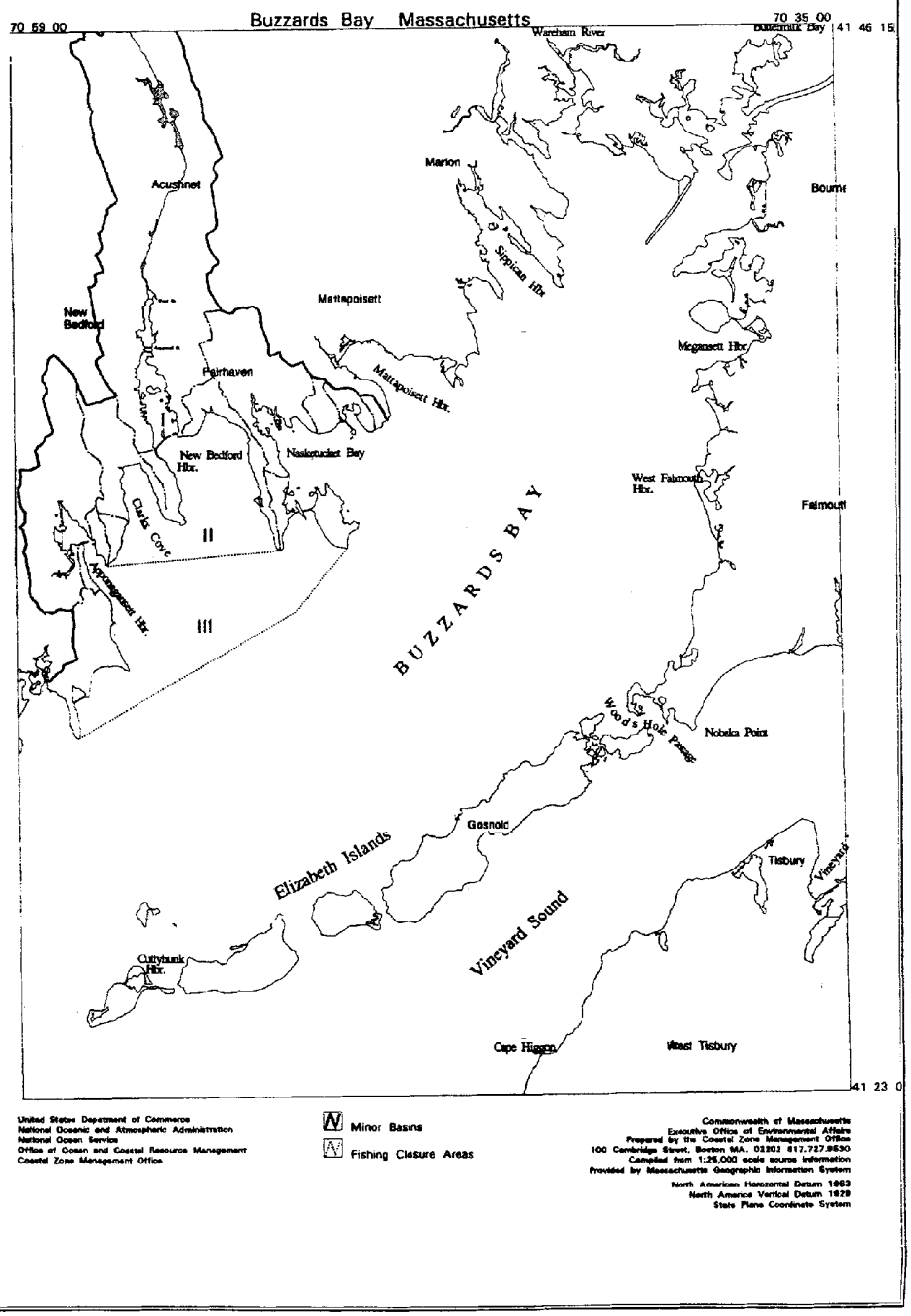
This notice contains a new collection-of-information requirement subject to the Paperwork Reduction Act. This collection-of-information requirement has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0302. No person is required to respond to the collection of information unless it displays a currently valid OMB Control Number. The public reporting burden for this collection is 1 hour per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Jack Terrill (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, Attention: NOAA Desk Officer.

Authority: 42 U.S.C. 4321 *et seq*. and 9601 *et seq*.

BILLING CODE 3510–22–F

Figure 1. New Bedford Harbor Environment

Primary area of concern is that described by the dark lines out to, and including Area III.



BILLING CODE 3510–22–C

Dated: September 29, 1995.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 95–24786 Filed 10–4–95; 8:45 am]

BILLING CODE 3510–22–F

Patent and Trademark Office

RIN 0651–XX04

[Docket No. 950921236–5236–01]

Interim Guidelines for Examination of Design Patent Applications for Computer-Generated Icons

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice and request for public comments.

SUMMARY: The Patent and Trademark Office (PTO) requests comments from any interested member of the public on interim guidelines that will be used by PTO personnel in their review of design patent applications for computer-generated icons. Because these guidelines govern internal practices, they are exempt from notice and comment rulemaking under 5 U.S.C. 553(b)(A).

DATES: October 5, 1995.

Written comments on the interim guidelines will be accepted by the PTO until November 6, 1995.

Written comments will be available for public inspection on November 20, 1995, in Room 8D19 of Crystal Plaza 3, 2021 Jefferson Davis Highway, Arlington, Virginia. In addition, comments provided in machine-readable format will be available through anonymous file transfer protocol (ftp) via the Internet (address: comments.uspto.gov) and through the World Wide Web (address: www.uspto.gov).

ADDRESSES: Written comments should be addressed to the Assistant Commissioner for Patents, Washington, DC 20231, marked to the attention of John Kittle, Director, Group 1100/2900, Crystal Plaza 3, 8D19. Comments may also be submitted by telefax at (703) 305–3600 or by electronic mail through the INTERNET to ''icon-pat@uspto.gov.''

FOR FURTHER INFORMATION CONTACT: John Kittle by telephone at (703) 308–1495 or by mail to his attention addressed to the Assistant Commissioner for Patents, Group 1100/2900, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Written comments should include the following information:

—Names and affiliation of the individual responding;
—An indication of whether the comments offered represent views of the respondent's organization or are the respondent's personal views; and
—If applicable, information on the respondent's organization, including the type of organization and general areas of interest.

Parties presenting written comments are requested, where possible, to provide their comments in machine-readable format. Such submissions may be provided by electronic mail messages sent over the Internet, or on a 3.5″ floppy disk formatted for use in either a Macintosh or MS–DOS based computer. Machine-readable submissions should be provided as unformatted text (e.g., ASCII or plain text).

Dated: September 29, 1995.

Lawrence J. Goffney, Jr.,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

I. Interim Guidelines for Examination of Design Patent Applications for Computer-Generated Icons

The following guidelines have been primarily developed to assist PTO personnel in determining whether design patent applications for computer-generated icons comply with the ''article of manufacture'' requirement of 35 U.S.C. 171.[1]

A. General Principle Governing Compliance with the ''Article of Manufacture'' Requirement

A design for a computer-generated icon[2] which is embodied in an article of manufacture is statutory subject matter for a design patent under Section 171. Thus, if an application claims a computer-generated icon embodied in a computer screen, monitor, other display panel, or a portion thereof,[3] that is drawn in solid lines,[4] the claim complies with the ''article of manufacture'' requirement of Section 171.

B. Procedures for Evaluating Whether Design Patent Applications Drawn to Computer-Generated Icons Comply With the ''Article of Manufacture'' Requirement

PTO personnel shall adhere to the following procedures when reviewing design patent applications drawn to computer-generated icons for compliance with the ''article of manufacture'' requirement of Section 171.

1. Read the entire disclosure to determine what the applicant claims as the design,[5] and to determine whether the design is embodied in an article of manufacture. 37 CFR 1.71 and 1.152–54.

a. Review the drawing to determine whether a computer screen, monitor, other display panel, or portion thereof, is depicted in solid lines. 37 CFR 1.152.

b. Review the title to determine whether it clearly describes the claimed subject matter.[6] 37 CFR 1.153.

c. Review the specification to determine whether a characteristic feature statement is present. 37 CFR 1.71. If a characteristics feature statement is present, determine whether it describes the claimed subject matter as a computer-generated icon embodied in a computer screen, monitor, other display panel, or portion thereof.[7]

2. If the drawing does not depict a computer-generated icon embodied in a computer screen, monitor, or a portion thereof, in solid lines, reject the claimed design under Section 171 and 35 U.S.C. 112, second paragraph, for failing to: (i) comply with the article of manufacture requirement; and (ii) particularly point out and distinctly claim the subject matter which the applicant regards as the invention.[8]

a. If the disclosure as a whole does *not* suggest or describe[9] the claimed subject matter as a computer-generated icon embodied in a computer screen, monitor, other display panel, or portion thereof, indicate that: (i) the claim is defective under Sections 171 and 112, second paragraph; and (ii) amendments to the written description, drawings and/or claim attempting to overcome the rejections will be rejected under 35 U.S.C. 112, first paragraph, for lack of written description and changes to the written description and drawings will be disapproved under 35 U.S.C. 132 as constituting new matter.

b. if the disclosure as a whole suggests or describes the claimed subject matter as a computer-generated icon embodied in a computer screen, monitor, other display panel, or portion thereof, indicate that the drawing may be amended to overcome the rejections under Section 171 and 112, second paragraph. Suggest amendments which would bring the claim into compliance with Section 171 and 112, second paragraph.

3. Indicate all objections to the disclosure for failure to comply with the formal requirements of the Rules of Practice in Patent Case. 37 CFR 1.71, 1.181–85, and 1.152–154. Suggest amendments which would bring the disclosure into compliance with the formal requirements of the Rules of Practice in Patent Cases.

4. Upon response by applicant:

a. Review applicant's arguments and any amendments;

b. Approve entry of any amendments which have support in the original disclosure;

c. Review all arguments and evidence of record to determine whether the drawing, title, and specification clearly disclose a computer-generated icon embodied in a computer screen,

monitor, other display panel, or portion thereof.

5. If a preponderance of the evidence [10] establishes that the computer-generated icon is embodied in a computer screen, monitor, other display panel, or portion thereof, withdraw the rejection under Sections 171 and 112, second paragraph.

II. Effect of the Interim Guidelines on Pending Design Applications Drawn to Computer-Generated Icons

PTO personnel shall follow the procedures set forth in Section I of these Interim Guidelines when examining design patent applications drawn to computer-generated icons which are pending in the PTO as of the date of publication of these Interim Guidelines in the Federal Register.

III. Treatment of Type Fonts

Traditionally, type fonts were generated by solid blocks from which each letter or symbol was produced. Consequently, the PTO has historically granted design patents drawn to type fonts. PTO personnel should not reject claims for type fonts under Section 171 for failure to comply with the ''article of manufacture'' requirement on the basis that more modern methods of typesetting, including computer-generation, do not require solid printing blocks. However, PTO personnel should treat applications specifically drawn to computer-generated type fonts in accordance with the procedures set forth in Section I of these Interim Guidelines.

IV. Notes

1. Further procedures for search and examination of design patent applications to ensure compliance with all other conditions of patentability are found in the Manual of Patent Examining Procedure, Chapter 1500.

2. Computer-generated icons, such as full screen displays and individual icons, are two-dimensional images which alone are surface ornamentation. See, *e.g., Ex parte Strijland*, 26 USPQ2d 1259, 1262 (Bd. Pat App. & Int. 1992) (computer-generated icon alone is merely surface ornamentation).

3. Since a patentable ''design is inseparable from the object to which it is applied and cannot exist alone merely as a scheme of surface ornamentation,'' a computer generated icon must be embodied in a computer screen, monitor, other display panel, or portion thereof, to satisfy Section 171. MPEP 1502.

4. *Strijland* indicated that a computer-generated icon might be statutory subject matter if the solid-line icon is displayed on a computer screen which is shown as a broken-line drawing. 26 USPQ2d at 1263, 1266. However, since broken lines may be used to show visible environmental structure and not claim subject matter, representation of a computer screen, monitor, other display panel, or portion thereof, in broken lines does not satisfy Section 171. See, *e.g., In re Zahn*, 617 F.2d 261, 268, 204 USPQ 988, 995 (CCPA 1980) (broken lines in design drawing show environmental structure, not claim). Broken lines may, however, be used to show other environmental structure, such as a central processing unit which contains equipment to operate the computer screen, monitor, or other display panel.

5. Since the claim must be in formal terms to the design ''as shown, or as shown and described,'' the drawing provides the best description of the claim. 37 CFR 1.53.

6. The following titles do not adequately describe a design for an article of manufacture under Section 171: ''computer icon;'' or ''icon.'' On the other hand, the following titles do adequately describe a design for an article of manufacture under Section 171: ''computer screen with an icon;'' ''display panel with a computer icon;'' ''portion of a computer screen with an icon image;'' ''portion of a display panel with a computer icon image;'' ''portion of a display panel with a computer icon image;'' or ''portion of a monitor displayed with a computer icon image.''

7. See *McGrady* v. *Aspenglas Corp.*, 487 F. Supp. 859, 861, 208 USPQ 242, 244 (S.D.N.Y. 1980) (descriptive statement in design patent application narrows claim scope).

8. A computer screen, monitor, or other display panel is clearly described by showing a larger surface area than that immediately behind the icon image.

9. A broken line drawing of a computer screen shown in the original disclosure suggests that the applicant originally had possession of the invention as embodied in an article of manufacture. Accordingly, the broken line drawing may be converted to a solid line drawing without violating the prohibition against new matter. See *In re Rasmussen*, 650 F.2d 1212, 1214, 211 USPQ 323, 326 (CCPA 1981) (An applicant is entitled to claims as broad as the original disclosure will allow). However, a solid line drawing of a computer screen in the original disclosure may not be amended to a solid line drawing of *only a portion* of the computer screen without support in the original disclosure for such an amendment. See, *e.g., Ballew* v. *Watson*, 290 F.2d 353, 355, 129 USPQ 48, 50 (Comm'r Pat. the original disclosure and would ''create newness by the difference achieved'' is new matter).

10. See *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992) (''After evidence or argument is submitted by the applicant in response, patentability is determined on the totality of the record, by a preponderance of evidence with due consideration to persuasiveness of argument.'').

[FR Doc. 95–24777 Filed 10–4–95; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1955.

DATES: Interested persons are invited to submit comments on or before December 4, 1995.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment

addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 29, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: REINSTATEMENT.
Title: Performance Report for the School, College, and University Partnerships (SCUP) Program.
Frequency: Annually.
Affected Public: Not for Profit institutions; State, Local or Tribal Government.
Reporting Burden:
Responses: 1.
Burden Hours: 240.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: SCUP grantees must submit the report annually so the Department can evaluate the performance of grantees prior to awarding continuation grants. The Department will also aggregate data on project outcomes related to student and school performance impact, and identify exemplary projects.

Office of Postsecondary Education

Type of Review: EXTENSION.
Title: Addendum to Federal Direct PLUS Loan Promissory Note Endorser.
Frequency: One Time.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 34,000.
Burden Hours: 17,000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: Applicants for Federal Direct PLUS Loans who have adverse credit may obtain endorsers. The information collected on this form is used to check the credit of endorsers. The respondents are endorsers.

Office of Education Research and Improvement

Type of Review: REINSTATEMENT.
Title: Application for the National Assessment of Educational Progress Data Reporting Program.
Frequency: Annually.
Affected Public: Businesses or other for-profit; Not for Profit institutions; State, Local or Tribal Government.
Reporting Burden:
Responses: 15.
Burden Hours: 360.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: Congress has mandated reports on the National Assessment of Educational Progress. This grant program will encourage researchers to study these data and expand understanding of the relationship between school and student characteristics and academic achievement. Grant applicants will be universities, educational research organizations and consulting firms.

Office of Educational Research and Improvement

Type of Review: NEW.
Title: Standards for the Conduct and Evaluation of Activities Carried out by OERI—Evaluation of Applications for Grants, Cooperative Agreements and Proposals for Contracts.
Frequency: One Time.
Affected Public: Businesses or other for-profit; Not for Profit institutions; State, Local or Tribal Governments.
Reporting Burden:
Responses: 3,000.
Burden Hours: 36,000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The Office of Educational Research and Improvement (OERI) was reauthorized by P.L. 103–227. This statute required OERI to establish standards ''for reviewing and evaluating all applications for grants and cooperatives agreements and bids for contracts which exceed $100,000''. The Department will use the information to evaluate and provide recommendations to the Secretary on which applications should be funded.

Office of Bilingual Education and Minority Languages and Affairs

Type of Review: NEW.
Title: A Descriptive Study of ESEA Title VII Educational Services for Secondary School Limited English Proficiency Students (LEP).
Frequency: One Time.
Affected Public: State, Local or Tribal Governments.
Reporting Burden:
Responses: 100.
Burden Hours: 65.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This study consists of a literature review and a survey of a sample of 100 Title VII grantees having 10 or more LEP secondary school students in grades 9–12. The survey will consist of a mail survey and a followup telephone interview to verify, correct or add information available in the grantee applications monitoring reports and evaluation reports. This effort will help in future policy development and demographic knowledge.

[FR Doc. 95–24709 Filed 10–4–95; 8:45 am]
BILLING CODE 4000–01–M

[CFDA No.: 84.234]

Office of Special Education and Rehabilitative Services Projects With Industry

ACTION: Withdrawal of Notice Inviting Applications for New Awards for Fiscal Year 1996.

SUMMARY: On August 10, 1995 the Secretary published in the Federal Register (60 FR 40956) a combined application notice (CAN) inviting applications for new awards for fiscal year (FY) 1996 under a number of the Department's direct grant and fellowship programs. Included in the CAN was a notice inviting applications for new awards under the Projects With Industry program. The purpose of this notice is to withdraw the invitation for applications for new awards under the Projects With Industry program. A notice with the revised deadlines inviting applications for new awards for FY 1996 will be published in the Federal Register at a later date.

FOR FURTHER INFORMATION CONTACT: Martha Muskie, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3332, Switzer Building, Washington, D.C. 20202–2650. Telephone: (202) 205–3293. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9999.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 29 U.S.C. 795g.

Dated: September 29, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–24733 Filed 10–4–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–1514–000, et al.]

Astra Power, Inc., et al.; Electric Rate and Corporate Regulation Filings

September 26, 1995.

Take notice that the following filings have been made with the Commission:

1. Astra Power, Inc.

[Docket No. ER95–1514–000]

Take notice that on September 15, 1995, Astra Power, Inc. (Astra Power) tendered for filing an amendment to its petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 previously filed in this proceeding on August 10, 1995. In its original application, Astra Power requested an order accepting its rate schedule, effective as of the date of filing. The purpose of this amendment is to provide Astra Power's revised analysis of its affiliates', Western Resources, Inc. and Kansas Gas and Electric Company, market power in generation.

Pursuant to its application, Astra Power intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Astra Power sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Astra Power is not currently in the business of generating, transmitting or distributing electric power.

Comment date: October 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Edison Company

[Docket No. ER95–1624–000]

Take notice that on September 15, 1995, Commonwealth Edison Company (ComEd) resubmitted a Service Agreement, dated July 26, 1995, establishing Catex Vitol Electric L.L.C. (Catex Vitol) as a customer under the terms of ComEd's Power Sales Tariff PS–1 (PS–1 Tariff). ComEd had inadvertently omitted a page from the Service Agreement in the initial filing on August 24, 1995.

ComEd continues to request an effective date of July 26, 1995, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Catex Vitol and the Illinois Commerce Commission.

Comment date: October 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Electric & Gas Company

[Docket No. ER95–1715–000]

Take notice that on September 14, 1995, Public Service Electric & Gas Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Entergy Services, Inc.

[Docket No. ER95–1742–000]

Take notice that on September 12, 1995, Entergy Services, Inc. (ESI), acting as agent for Arkansas Power & Light Company (AP&L), submitted for filing the Third Amendment to the Power Coordination, Interchange and Transmission Agreement between AP&L and the City of Osceola, Arkansas (Osceola), dated December 22, 1982, and the Fourth Amendment to the Electric Peaking Power Service Agreement between AP&L and Osceola, dated September 16, 1985. ESI also filed a Letter Agreement between AP&L and Osceola which serves to modify AP&L's procedures under the peak load condition generation alert system. To the extent necessary, Entergy Services requests a waiver of Part 35 of the Commission's Regulations.

Comment date: October 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–1743–000]

Take notice that on September 12, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Rochester Gas and Electric Company, dated September 8, 1995. This Service Agreement specifies that Rochester Gas and Electric Company has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and Rochester Gas and Electric Company to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of September 8, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: October 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, West Penn Power Company (the APS Companies)

[Docket No. ER95–1744–000]

Take notice that on September 11, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies), filed a Standard Transmission Service Agreement to add Citizens Lehman Power Sales, Ohio Edison Company, Pennsylvania Power Company, and Tennessee Power Company as Customers to the APS Companies' Standard Transmission Service Rate Schedule which has been accepted for filing by the Federal Energy Regulatory Commission. The proposed effective date under the proposed rate schedule is August 13, 1995.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: October 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. PECO Energy Company

[Docket No. ER95–1745–000]

Take notice that on September 11, 1995, PECO Energy Company (PECO) filed a Service Agreement dated August 15, 1995, with Maine Public Service Company (MPSC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds MPSC as a customer under the Tariff.

PECO requests an effective date of August 15, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to MPSC and to the Pennsylvania Public Utility Commission.

Comment date: October 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Interstate Power Company

[Docket No. ER95–1746–000]

Take notice that on September 13, 1995, Interstate Power Company (IPW) tendered for filing a Transmission Service Agreement between IPW and NorAm Energy Services, Inc. (NorAm). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to NorAm.

Comment date: October 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Superior Electric Power Corporation

[Docket No. ER95–1747–000]

Take notice that on September 13, 1995, Superior Electric Power Corporation (SEPC) tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, an application requesting the Commission to accept and approve its Rate Schedule No. 1 to be effective on and after November 1, 1995 and grant waivers and blanket approvals under various regulations of the Commission.

SEPC intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where SEPC purchases power, including capacity and related services, and/or energy from electric utilities, qualifying facilities and independent power producers, and resells such power and/or energy to other purchasers, SEPC will be functioning as a marketer. It proposes to make such sales at rates and on terms, and conditions to be mutually agreed with the purchasing party. In transactions where SEPC does not take title to the electric power and/or energy, SEPC will be limited to the role of a broker and will charge a fee for its services. SEPC is not in the business of generating, transmitting or distributing electric power. SEPC does not currently have or contemplate acquiring title to any electric power transmission facilities.

Comment date: October 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. The Washington Water Power Company

[Docket No. ER95–1748–000]

Take notice that on September 13, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a signed service agreement under FERC Electric Tariff Volume No. 4 with Tenneco Energy Marketing Company along with a Certificate of Concurrence with respect to exchanges, and a new signed service agreement with the City of Needles. WWP requests waiver of the prior notice requirement and requests an effective date of October 1, 1995. A signed service agreement with Public Utility District No. 1 of Chelan County previously approved as an unsigned service agreement is also submitted with this filing.

Comment date: October 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Company

[Docket No. ER95–1749–000]

Take notice that on September 13, 1995, Commonwealth Edison Company (ComEd), submitted a Service Agreement, dated August 1, 1995, establishing Koch Power Services, Inc. (Koch) as a customer under the terms of ComEd's Power Sales Tariff PS–1 (PS–1 Tariff), and a Service Agreement, dated August 30, 1995, establishing MidCon Power Services Corporation (MidCon) as a customer under the terms of ComEd's Transmission Service Tariff FTS–1 (FTS–1 Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2, and designated the FTS–1 Tariff as FERC Electric Tariff, Original Volume No. 4.

ComEd requests an effective date of August 14, 1995, and August 30, 1995, respectively, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Koch, MidCon and the Illinois Commerce Commission.

Comment date: October 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Northwestern Public Service Company

[Docket No. ES95–41–000 Company]

Take notice that on September 19, 1995, Northwestern Public Service Company filed an application under § 204 of the Federal Power Act seeking authorization to issue and to renew or extend the maturity of, promissory notes to evidence short-term borrowings, from time to time, in an aggregate amount not exceed $75 million principal amount outstanding at any one time, during the period ending October 1, 1997, with final maturities not later than October 1, 1998.

Comment date: October 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24724 Filed 10–4–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–1672–003, et al.]

Imprimis Corporation, et al.; Electric Rate and Corporate Regulation Filings

September 27, 1995.

Take notice that the following filings have been made with the Commission:

1. Imprimis Corporation

[Docket No. ER94–1672–003]

Take notice that on September 13, 1995, Imprimis Corporation filed certain information as required by the Commission's December 14, 1994, order in Docket No. ER94–1672–000. Copies of Imprimis Corporation's informational filing are on file with the Commission and are available for public inspection.

2. Texas-Ohio Power Marketing, Inc.

[Docket No. ER94–1676–004]

Take notice that on July 12, 1995, Texas-Ohio Power Marketing, Inc. filed certain information as required by the Commission's October 31, 1994, order in Docket No. ER94–1676–000. Copies of Texas-Ohio Power Marketing, Inc.'s informational filing are on file with the Commission and are available for public inspection.

3. Louisville Gas and Electric Company

[Docket No. ER95–997–000]

Take notice that on September 20, 1995, Louisville Gas and Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Boyd Rosene Associates, Inc.

[Docket No. ER95–1572–000]

Take notice that on September 13, 1995, Boyd Rosene Associates, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: October 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Idaho Power Company

[Docket No. ER95–1682–000]

Take notice that on September 18, 1995, the Cities of Azusa, Banning, and Colton tendered for filing a letter of concurrence to the Agreement with Idaho Power Company.

Comment date: October 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Company

[Docket No. ER95–1705–000]

Take notice that on September 1, 1995, Commonwealth Edison Company (ComEd) submitted three Service Agreements, establishing Citizens Lehman Power Sales (Citizens), LG&E Power Marketing Inc. (LG&E), and NorAm Energy Services (NorAm) as customers under the terms of ComEd's Transmission Service Tariff FTS–1 (FTS–1 Tariff). The Commission has previously designated the FTS–1 Tariff as FERC Electric Tariff, Original Volume No. 4.

ComEd requests an effective date of August 21, 1995 for the Service Agreements with Citizens and LG&E, and August 17, 1995, for the Service Agreement between ComEd and NorAm, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Citizens, LG&E, NorAm, and the Illinois Commerce Commission.

Comment date: October 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER95–1708–000]

Take notice that on September 6, 1995, Commonwealth Edison Company (ComEd) submitted a Service Agreement, dated July 27, 1995, establishing Wabash Valley Power Association, Inc. (Wabash Valley) as a customer under the terms of ComEd's Power Sales Tariff PS–1 (PS–1 Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2 ComEd and Wabash Valley also submitted for filing a Letter Agreement, dated August 24, 1994, whereby ComEd and Wabash Valley agree to cancel an existing Interchange Agreement, dated March 23, 1993.

ComEd requests an effective date of August 24, 1995, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Wabash Valley and the Illinois Commerce Commission.

Comment date: October 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Duquesne Light Company

[Docket No. ER95–1709–000]

Take notice that on September 5, 1995, Duquesne Light Company tendered for filing a Service Agreement between Duquesne Light Company and Enron Power Marketing dated August 16, 1995.

Comment date: October 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Madison Gas and Electric Company

[Docket No. ER95–1710–000]

Take notice that on September 5, 1995, Madison Gas and Electric Company (MGE) tendered for filing a service agreement with Engelhard Power Marketing, Inc. under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the filing date.

Comment date: October 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER95–1720–000]

Take notice that on September 7, 1995, Entergy Services, Inc. (Entergy Services) on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service, Inc., tendered for filing a First Amendment to the Transmission Service Agreement between Entergy Services and Enron Power Marketing Delivery and a Potential Point of Delivery and a Potential Point of Receipt under Attachment A of the Transmission Service Agreement dated April 5, 1995. In addition, the Amendment adds Southwestern Electric Power Company as a Potential Receiving Party.

Comment date: October 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER95–1730–000]

Take notice that on September 11, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between Koch Power Services, Inc. and Virginia Power dated August 17, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide service to Koch Power Services, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: October 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER95–1731–000]

Take notice that on September 11, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between Appalachian Power Company and Virginia Power, dated August 17, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Appalachian Power Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, the Tennessee Public

Service Commission, the Public Utility Commission of Ohio, the Indiana Utility Regulatory Commission, the Kentucky Public Service Commission, the Michigan Public Service Commission, and the North Carolina Utilities Commission.

Comment date: October 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24725 Filed 10–4–95; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 3442–021 et al.]

Hydroelectric Applications, [City of Nashua and Mine Falls Ltd Partnership, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: Request Approval of Recreation Plan.

b. Project No: 3442–021.

c. Date Filed: July 3, 1995.

d. Applicant: City of Nashua and Mine Falls Ltd. Partnership.

e. Name of Project: Mine Falls Hydroelectric Project.

f. Location: Hillsborough Co., New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Applicant Contact: Mr. A. J. Maggio, Manager, Field Services, Energy Resources Group, 35 Industrial Park Drive, Dover, NH 03820, (603) 742–0124.

i. FERC Contact: Jean Potvin, (202) 219–0022.

j. *Comment Date*: November 3, 1995.

k. Description of Project: Licensee requests approval of a recreation plan which includes a signed vehicular access road down to the reservoir boat ramp, a 60′×100′ parking area adjacent to the reservoir boat ramp, and a scenic overlook.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

2 a. Type of Application: Amendment of License.

b. Project No.: 10896–010.

c. Dated filed: April 3, 1995.

d. Applicant: City of Danville, VA.

e. Name of Project: Pinnacles.

f. Location: The project is located on the Dan River, in Patrick, Henry, and Pittsylvania Counties, Virginia.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Duane S. Dahlquist, P.E., Director, Electric Department, City of Danville, P.O. Box 3300, Danville, VA 24543, Phone: (804) 799–5270, Fax : (804) 799–6583.

i. FERC Contact: Buu T. Nguyen, (202) 219–2913.

j. *Comment Date*: November 13, 1995.

k. Description of Amendment: The licensee, City of Danville, VA, requested its license be amended to change the type of turbine (from Pump-as Turbine to Francis) and to install an additional unit at the base of Talbott Dam. The project's installed capacity will increase from 10,425 kW to 10,670 kW, and the hydraulic capacity will increase from 277 cfs to 310 cfs.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

3 a. Type of Application: Surrender of Exemption.

b. Project No: 6162–002.

c. Date Filed: September 21, 1994.

d. Applicant: Hisanori Morimoto.

e. Name of Project: Tourin Musica Project.

f. Location: Crossett Brook, Washington County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 USC Section 791(a)–825(r).

h. Applicant Contact: Hisanori Morimoto, Route 2, Box 1270, Duxburg, VT 05676, (802) 244–8821.

i. FERC Contact: Hillary Berlin, (202) 219–0038.

j. *Comment Date:* November 13, 1995.

k. Description of Project: The project, originally built in 1918, was rehabilitated in 1983. The project consists of a gravity dam, a steel penstock, a powerhouse on the lower floor of a factory building, and other related works. The exemptee states that the power plant has been shut down due to a generator cable fire, and that it is not economical to repair and operate the project.

l. The notice also consists of the following standard paragraphs: B, C1, and D2.

4 a. Type of Application: Surrender of License.

b. Project No: 7174–023.

c. Date Filed: September 1, 1995.

d. Applicant: Truman Price, Inc.

e. Name of Project: Cottrell Project.

f. Location: McCloskey Creek, Skamania County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. Section 791(a)–825(r).

h. Applicant Contact: Mary Price, 7019 MacArthur Boulevard, Bethesda, MD 20816, (301) 224–2043.

i. FERC Contact: Hillary Berlin, (202) 219–0038.

j. *Comment Date:* November 13, 1995.

k. Description of Project: The licensee states that the project is uneconomical to construct at this time. A permanent access road to the planned project site was constructed in 1991. The road is and will continue to be used by the Washington Department of Natural Resources and the Longview Fibre Company.

l. The notice also consists of the following standard paragraphs: B, C1, and D2.

5 a. Type of Application: Change of Land Rights to Permit Water Withdrawal.

b. Project No.: 485–038.

c. Date Filed: July 21, 1995.

d. Applicant: Georgia Power Company.

e. Name of Project: Bartletts Ferry Project.

f. Location: The site is located in the Bartlett's Ferry Reservoir, Layfield Tributary of the Chattahoochee River, Harris County, Georgia.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Mr. Larry J. Wall, Georgia Power Company, Connector Building, 2nd Floor, 333 Piedmont Avenue, Atlanta, GA 30308, (404) 526–2054.

i. FERC contact: John K. Hannula, (202) 219–0116.

j. *Comment date*: November 9, 1995.

k. Description of Application: The applicant proposes to permit an increase of water withdrawal for an existing facility operated by Harris County, Georgia. The applicant requests an increase from an approved 2,131,200 gallons per day to 3,000,000 gallons per day. The water withdrawal is for consumption.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: September 28, 1995, Washington, D.C.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24726 Filed 10–4–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–764–000, et al.]

East Tennessee Natural Gas Company, et al.; Natural Gas Certificate Filings

September 28, 1995.

Take notice that the following filings have been made with the Commission:

1. East Tennessee Natural Gas Company

[Docket No. CP95–764–000]

Take notice that on September 19, 1995, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–764–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point located in Loudon County, Tennessee under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee proposes to construct and operate a new delivery point consisting of a 4-inch hot tap, approximately 30 feet of interconnecting pipe, and gas measurement equipment for Loudon Utilities Gas Department (Loudon Utilities). East Tennessee states that Loudon Utilities, an existing customer, would receive up to 8,626 Dth of natural gas per day and up to 3,148,490 Dth per year at this point. East Tennessee also mentions that the new facilities would cost approximately $90,254 and Loudon Utilities would reimburse these costs.

East Tennessee asserts that the installation of the proposed delivery point is not prohibited by its tariff and that it has sufficient capacity to accomplish these deliveries without detriment or disadvantage to any of East Tennessee's other customers. East Tennessee also mentions that there will be no increase in the maximum daily quantity under Loudon Utilities' current firm transportation contract.

Comment date: November 13, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP95–769–000]

Take notice that on September 20, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP95–769–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to certificate a delivery point to be used for Part 284 transportation under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to certificate a delivery point in Clark County, Kentucky to deliver about 160 dth/d to Winchester Farms Dairy under Part 284 transportation, which point was constructed under Section 311.

Comment date: November 13, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Trunkline Gas Company

[Docket No. CP95–777–000]

Take notice that on September 22, 1995, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–777–000 a request pursuant to Sections 157.205 and 157.208(f)(2) of the Commission's Regulations under the Natural Gas Act for authorization to increase the maximum allowable operating pressure (MAOP) from 1,200 to 1,300 psi in a 16'' lateral pipeline (319B–3800 lateral) extending from South Timbalier Block 175 to Ewing Bank Block 826, Offshore Louisiana, under its blanket certificate issued in Docket No. CP83–84–000,[1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Trunkline states that the increase in the MAOP in its 319B–3800 lateral is required to alleviate operating pressure variances on laterals upstream of Trunkline's T–22 platform located in South Timbalier Block 175, Offshore Louisiana. Trunkline proposes to install a pressure limiting device at the T–22 platform in order to prevent the higher pressure from migrating into the downstream system.[2] Trunkline states that this increase in the MAOP will have no impact on Trunkline's mainline system downstream of the T–22 platform. Trunkline holds a blanket transportation certificate pursuant to Part 284 of the Commission's Regulations issued in Docket No. CP86–586–000.[3]

Comment date: November 13, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. Florida Gas Transmission Company

[Docket No. CP95–781–000]

Take notice that on September 27, 1995, Florida Gas Transmission

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[1] *See,* 22 FERC ¶ 62,044 (1983).

[2] Trunkline states that construction will be done pursuant to Section 2.55(a) of the Commission's Regulations.

[3] *See,* 39 FERC ¶ 61,100 (1987).

Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP95–781–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service to Tennessee Gas Pipeline Company (TGP) which was authorized in Docket No. CP82–388–000 [4] and amended in Docket No. CP82–388–003,[5] all as more fully set forth in the application on file with the Commission and open to public inspection.

FGT proposes to abandon the transportation service that was provided to TGP under an agreement dated April 5, 1982, designated as Rate Schedule X–20 and an amendatory agreement dated August 29, 1983, designated Rate Schedule X–25. Pursuant to Rate Schedule X–20, FGT agreed to transport, on an interruptible basis, up to 2,000 MMBtu of natural gas per day for TGP. Under this agreement FGT would receive the gas for TGP from the Jay Field in Santa Rosa County, Florida and deliver it to TGP, by displacement, at an existing interconnection in Starr County, Texas. Pursuant to Rate Schedule X–25, FGT increased the maximum amount of gas it transports for TGP on an interruptible basis to 5,000 MMBtu per day. FTG states that it no longer transports gas for TGP under the aforementioned agreement, as amended, and that TGP has agreed to termination of this agreement. FTG further states that it does not propose to abandon any facilities herein.

Comment date: October 19, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

[4] *See* 21 FERC ¶ 62,287 (1982).

[5] *See* 29 FERC ¶ 62,294 (1984).

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24727 Filed 10–4–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–780–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

September 29, 1995.

Take notice that on September 26, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP95–780–000 a request pursuant to Section 157.205 of the Commission's Regulations to establish a new point of delivery to Commodore Gas Company (Commodore) located in Crawford County, Pennsylvania under Columbia's blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia proposes to reverse the top-works of a 2-inch meter setting, install a valve, filter separator, gas sampler and replace a gauge on Columbia's Line 10261 to provide a new point of delivery in order to provide interruptible transportation service for up to 1,200 dekatherms (dth) per day and up to 480,000 dth annually, for residential and commercial use, for Commodore in Crawford County, Pennsylvania under Columbia's Rate Schedule ITS within certificated entitlements. Columbia states that there is no impact on Columbia's existing design day and annual obligations to its other customers as a result the establishment of the additional delivery point. Columbia states that commodore would reimburse Columbia for the cost of these facilities estimated to be $12,300, plus gross-up for income tax.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24728 Filed 10–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG95–9–000]

National Fuel Gas Supply Corporation; Notice of Filing

September 29, 1995.

Take notice that on September 20, 1995, National Fuel Gas Supply Corporation (National Fuel) filed a ''Petition of National Fuel Gas Supply Corporation for Limited Waiver or Clarification of Regulations.'' National Fuel seeks a waiver of the Federal Energy Regulatory Commission's

marketing affiliate regulations described under Order Nos. 497 *et seq.*[1] and Order Nos. 566 and 566–A [2] to allow its affiliate, National Fuel Gas Distribution Corporation (Distribution) to participate in on-line electronic gas trading services without triggering the Commission's reporting requirements. Alternatively, National Fuel seeks a clarification that the regulations do not apply to National Fuel when it transports natural gas bought or sold by Distribution through on-line gas trading services.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Committee's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 16, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24729 Filed 10–4–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1993), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Conoco* v. *FERC*, D.C. Cir. No. 94–1745 (December 14, 1994).

[Docket No. CP95–775–000]

Natural Gas Pipeline Company of America; Application

September 29, 1995.

Take notice that on September 21, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No CP95–775–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon an exchange service with Amoco Production Company (Amoco), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Amoco delivered to Natural exchange quantities of up to an estimated 1,750 Mcf of natural gas per day, which would be equal to fifty percent of the natural gas received by Natural from Amoco, at or near the wellhead of the gas well (such gas well was estimated to produce up to 3,500 Mcf of natural gas per day) of Amoco in the West Johnson Bayou Field, Cameron Parish, Louisiana. It is further indicated that Natural redelivered, by displacement for the account of Amoco, equivalent volumes of natural gas to Florida Gas Transmission Company, at the outlet of the Texaco Henry Plant in Vermilion Parish, Louisiana. The exchange service was performed pursuant to the August 7, 1972 exchange agreement, Natural's Rate Schedule X–36, and as authorized in Docket No. CP73–157.

Natural states that it last used the agreement in 1981, and that there is no imbalance associated with the agreement. Natural further states that related gas purchase and transportation arrangements have already been terminated. Natural also states that recent discussions with Amoco indicate, that Amoco is not adverse to Natural seeking the abandonment requested in this proceeding.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 20, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by their public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24730 Filed 10–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–441–000]

Williams Natural Gas Company; Section 4 Filing

September 29, 1995.

Take notice that on September 20, 1995, Williams Natural Gas Company (Williams) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering services currently being provided in the Humphreys gathering system. Williams proposes that the effective date for the termination of service be the last day of the calendar month following the calender month in which the Commission issues a final order approving the abandonment of Williams' Humphreys gathering facilities to GMP Corporation.[1]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 4, 1995. Protests will be considered by the Commission in

[1] The Commission authorized the abandonment and transfer of these facilities in its order of August 31, 1994, (73 FERC ¶ 61,197).

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24731 Filed 10–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–730–000]

Wholesale Power Services, Inc.; Issuance of Order

September 29, 1995.

On June 25, 1993, as amended on July 26, 1995, Wholesale Power Services, Inc. (Power Services) filed an application seeking authority to sell electricity at market-based rates to non-affiliate entities and to broker the sale of power by affiliate entities. Power Services is a wholly-owned subsidiary of CINergy Investments, Inc. CINergy Investments, Inc. is a wholly-owned subsidiary of CINergy, Corp., which is the parent corporation of PSI Energy, Inc. and the Cincinnati Gas & Electric Company. In addition, Power Services's application requested waiver of certain Commission regulations.

In particular, Power Services requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Power Services. On September 22, 1995, the Commission issued an Order Accepting For Filing Request For Market-Based Rates, As Modified, And Granting And Denying Waivers And Authorizations (Order), in the above-docketed proceeding.

The Commission's September 22, 1995 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Power Services should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Power Services is authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Power Services' issuance of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 23, 1995.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24732 Filed 10–4–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5312–6]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before November 28, 1995.

ADDRESSES: Office of Air and Radiation, Atmospheric Pollution Prevention Division, Mail Code: 6202J, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION OR TO RECEIVE A COPY OF THE ICR CONTACT: Denessa Moses at EPA, (202) 233–9789, FAX number (202) 233–9578 Internet address: Moses.Denessa@EPAmail.EPA.gov.

SUPPLEMENTARY INFORMATION: Affected entities: Entities potentially affected by this action are the participants in the EPA Green Lights Program, and financing companies who volunteer information on their services.

Office of Air and Radiation

Title: Reporting and Record Keeping Requirements under EPA's Green Light Program, OMB# 2060–0255, ICR# 1614, expires March, 1996.

Abstract

Green Lights is a voluntary EPA program that encourages corporations, state and local governments, colleges and universities, and other organizations to adopt energy efficient lighting as a profitable means of preventing pollution and improving lighting quality. The program organization consists of three types of Green Lights participants: ''partners'', ''allies'', and ''endorsers''. Green Lights Partners agree to survey and upgrade lighting fixtures and procedures, if profitable. Allies work with EPA to increase awareness of energy-efficient lighting and provide information on products and services. Allies (except ''Surveyor Allies'') also agree to survey and upgrade their lighting. Endorsers agree to encourage their members to promote the Green Lights goal of using lighting in the most energy-efficient and environmentally-protective manner possible.

Partners and allies in the Green Lights program must complete, sign and submit to EPA a Memorandum of Understanding (MOU) that outlines the responsibilities of both the Green Lights participant and EPA. The MOU commits a Green Lights participant to survey all of its U.S. facilities and consider a full set of lighting options that maximize energy savings while being profitable and not compromising lighting quality. The participant agrees to complete lighting upgrades within five years of signing the MOU in 90 per cent of the square footage of its facilities that meet these criteria. Upon completion of a lighting upgrade, or annually if the project is not completed after a year, partners and allies must complete and submit to EPA an implementation report that documents energy-efficient improvements and cost savings. In addition, participants agree to re-survey facilities and re-analyze options at their facilities no later than five years after completing an upgrade.

EPA has developed this ICR to obtain authorization to collect information from Green Lights participants. EPA needs to collect initial information in the MOU to formally establish

participation in the Green Lights Program and to obtain general information on new Green Lights participants. EPA uses information obtained in the MOU to identify a Green Lights Implementation Manager and Media Liaison and to obtain data on the size and type of buildings subject to the Green Lights agreement. By agreeing to participate in the Green Lights Program, the participant agrees to the terms of various information collections specified by EPA in the MOU.

EPA needs to collect information in the Implementation Report to evaluate a participant's progress and performance, and overall program results. The information provided in the Implementation Report also allows EPA to identify the fixture types, lighting controls, maintenance methods, and implementation methods most commonly utilized, and to provide technical and other assistance to participants in completing their planned upgrades. By agreeing to participate in the Green Lights Program, the participant agrees to complete and submit this form upon completion of a project, or annually if the project is not completed after a year.

EPA needs to collect information from allies on energy-efficient lighting products and services to develop a directory and provide program partners with this information. EPA needs to collect case studies on successful energy-efficient lighting investments to provide examples of profitable, energy-saving investments. EPA needs to review, prior to public distribution, any materials that carry the Green Lights logo or mention the program to ensure that the program is being represented in an appropriate manner.

EPA needs to collect information from organizations that provide financing products and services. This information will be used by EPA to develop a directory describing these financing services that are available to assist program participants in accomplishing their lighting upgrades. This information will be collected (via a questionnaire) and is strictly voluntary.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(I) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement

The estimated annual burden to the respondent for this collection of information will vary, depending upon whether the respondent is a Green Lights Partner, Ally, Endorser, or financing company, and the length of time the respondent has participated in the Green Lights program. With this in mind, the respondent burden is estimated at a total of 348,102 hours per year. The average annual respondent burden is estimated at 141 to 145 hours (per partner or ally). New partners and allies will incur a one-time burden averaging 10.92 hours for reviewing and completing the MOU. New endorsers will incur a one-time burden averaging 0.2 hours for reviewing and completing the endorser agreement. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents

Green Lights Partners and Endorsers include corporations, state and local government, colleges and universities, and other organizations. Green Lights Allies include lighting manufacturers, lighting management companies, and utilities. Companies appearing the EPA financial directory include utility companies and other financing companies.

Estimated number of Respondents

EPA estimates that there will be an average of 1,717 partners, 575 allies, and 395 endorsers during the period covered by this ICR, for a total of 2,687 participants. EPA also estimates that 615 lighting financing providers will submit information to EPA for future publication in a directory.

Frequency of Response

The Memorandum of Understanding (MOU) is completed and submitted once, upon joining the Green Lights program. The implementation progress report is submitted upon project completion or annually if the project is not completed within one year. Case studies and other information on products and services from lighting manufacturers, lighting service providers, and utilities are obtained upon joining the Green Lights program. The lighting financing providers will gather information and submit a financing directory form to EPA four times per year.

Dated: September 29, 1995.

Jerry Lawson,

Acting Deputy Director, Atmospheric Pollution Prevention Division.

[FR Doc. 95–24789 Filed 10–4–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5312–5]

The Joint EPA/CMA Guidance Document on Section 608 Leak Repair Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of the Compliance Guidance for Industrial Process Refrigeration Leak Repair Requirements under Section 608 of the Clean Air Act.

SUMMARY: The Environmental Protection Agency announces the availability of a guidance document that was developed jointly by EPA and the Chemical Manufacturers Association (CMA) to provide guidance on the recently promulgated amendments to the leak repair requirements promulgated under Section 608 of the Clean Air Act Amendments of 1990. The amendment was promulgated in 60 FR 40420 on August 8, 1995. This guidance is the first document developed jointly by EPA and industry to provide compliance assistance on a newly promulgated rule on or near the effective date. The intent of this joint project is to provide guidance and compliance assistance to the regulated community before the requirements in

the rule become effective. Through this effort, EPA and CMA hope to facilitate early and substantial compliance through the development of timely guidance.

This document is developed for the corporate and plant personnel who would either oversee or perform activities that are affected by the amendment. The guidance document contains eight stand-alone modules that include timelines and questions/answers. The guidance also includes two flow diagrams summarizing the new requirements.

An open process was used to develop this guidance. Both EPA and CMA invited several environmental groups and unions that may have interests in this amendment to participate on the workgroup or review documents developed by the workgroup. In addition, the Agency was also careful to ensure that the development of the guidance did not affect the rulemaking process. To accomplish this, the draft guidance was developed based on the language in the proposed rule and discussions on any potential changes in the final rule were strictly prohibited. Once the rule was promulgated, the draft guidance was amended to reflect the final rule.

DATES: This document will be available to the public after September 27, 1995.

ADDRESSES: Copies of the Section 608 Leak Repair Amendment Guidance Document EPA300–B–95–010 may be obtained by calling the Stratospheric Protection Hotline at (1–800–296–1996) from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: For general information contact the Stratospheric Protection Hotline at (800) 296–1996. For information on specific aspects of the guidance document, contact Tracy Back at (202) 564–7076 or Emily Chow at (202) 564–7071, Chemical, Commercial, and Municipal Services Division (2224–A), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Dated: September 29, 1995.

Richard Colbert,

Acting Director, Office of Compliance.

[FR Doc. 95–24787 Filed 10–4–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5312–1]

Science Advisory Board; Notification of Public Advisory Committee Meeting(s), Open Meeting(s)

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Radiation Advisory Committee (RAC) of the Science Advisory Board (SAB) will hold public teleconference meetings on the dates and times described below. All times noted are Eastern Time. Information on how to participate in these teleconferences can be found at the end of this notice.

(1) Radiation Advisory Committee (RAC) Teleconference on Environmental Radiation Ambient Monitoring System (ERAMS) Advisory—October 24, 1995

The Radiation Advisory Committee (RAC) will conduct a teleconference meeting on Tuesday, October 24, 1995 from 11:00 am to 1:00 pm. In this teleconference, the RAC intends to discuss and reach closure on its draft advisory report, which provides advice to the Agency on reconfiguring the Agency's Environmental Radiation Ambient Monitoring System (ERAMS) [SAB Project #96–014]. The ERAMS is a continuous monitoring network operating throughout the U.S. and its territories. The basic goals of the network are to provide a means of estimating the ambient levels of radioactive pollutants in the environment, following trends in environmental radioactivity levels, and assessing the impact of fallout and other intrusions of radioactive materials. The RAC had conducted a review of ERAMS on July 13 and 14, 1995 at the Agency's National Air and Radiation Environmental Laboratory (NAREL) in Montgomery, Alabama (See Federal Register, Vol. 60, No. 121, Friday, June 23, 1995, pp. 32674–32675). The RAC was introduced to the topic of this review at its public meeting on May 25, 1995 in which a preliminary discussion occurred on the upcoming advisory review of ERAMS (See Federal Register, Vol. 60, No. 80, Wednesday, April 26, 1995, pp. 20491–20492).

The draft documents that are the subject of this review are available from the originating office (see below) and are *not* available from the SAB Office. To discuss technical aspects of the ERAMS program, or to obtain review and background information provided to the SAB's RAC, please contact Dr. Mary Clark, Technical Advisor, Office of Radiation and Indoor Air (ORIA), U.S. Environmental Protection Agency (6601J), 401 M Street, SW., Washington, DC 20460 (Tel. 202–233–9320; FAX 202–233–9651).

To simply obtain copies of the draft ERAMS documents, please contact Dr. Charles Petko at (334) 270–3400, FAX (334) 270–3451. The background documents that support this review are available in the Agency's Air and Radiation Docket. Please address written inquiries as follows: USEPA, Attn: Air and Radiation Docket, Mail Stop 6102, Air, Room M1500, First Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. The docket may be inspected from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays in Room 1500. A reasonable fee may be charged for copies of docket materials. Inquiries regarding access to the public information docket should be directed to Ms. Jamie Burnett at (202) 233–9340.

(2) Radiation Advisory Committee (RAC) Teleconference on Fiscal Year 1996 Project Planning—October 25, 1995

The Radiation Advisory Committee (RAC) will conduct a teleconference meeting on Wednesday, October 25, 1995 from 11:00 am to 1:00 pm. In this teleconference, the RAC intends to discuss its potential Fiscal Year 1996 review projects. The topics likely to be covered include scheduling and brief preliminary discussions of the tentative charges of the following:

(a) Environmental Radiation Ambient Monitoring System (ERAMS) II, [SAB Project #96–015],

(b) ICRP Lung Model for Estimating Doses From Inhaled Particulates, [SAB Project # 96–016],

(c) Review of Methodology for Estimating Uncertainties in Dose and Risk, [SAB Project #96–017],

(d) Radon Proficiency Programs, [SAB Project #96–018],

(e) Radon Measurement Protocol Evaluation Study, [SAB Project #96–019],

(f) National Survey of Radon in Workplaces, [SAB Project #96–020],

(g) Methodology for Identifying High Radon Geographic Areas, [SAB Project #96–021],

(h) Review of Application of Biological Effects of Ionizing Radiation (BIER VI) Report, Prepared by the National Academy of Sciences (NAS), [SAB Project #96–022],

(i) Review of the Possible Carcinogenicity of Electro-Magnetic Fields (EMF),

(j) Review of the Agency's Environmental Goals Project (Examination of ''measures of success'' for environmental goals through the year 2005),

(k) Reducing Risk II (A follow-up to Reducing Risk, 1990 Project), and

(l) Futures II (A follow-up to Futures, 1995 Project)

It is not expected in the time-frame available that extensive or comprehensive discussions will occur

on the above projects. Instead, it is anticipated that the main focus of the discussions will be overview and planning for managing the workload and focus of the RAC on the likely charges to be addressed among these topics in the course of the coming fiscal year. It is anticipated that the RAC will have a dialogue with the Agency staff on each of these topics, and if time permits, other possible review topics may be discussed.

To Obtain More Information on or Participate in These SAB Teleconference Meetings

These teleconference meetings are open to the public, telephone lines are limited and available on a first come basis. Any member of the public desiring to participate in the teleconferences, desiring additional information about the meetings, or desiring to obtain copies of the agendas and other information about the conduct of the meetings, or to request time on the agenda for public comments, please contact Ms. Diana Pozun, Staff Secretary, Science Advisory Board (1400F), US EPA, 401 M Street, S.W., Washington D.C. 20460, by telephone at (202) 260–6552 or FAX at (202) 260–7118, or via the INTERNET at: Pozun.Diana@EPAMAIL.EPA.GOV. For questions regarding technical issues to be discussed, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official, Science Advisory Board (1400F), USEPA, 401 M Street, S.W., Washington, D.C. 20460, tel. (202) 260–2560, FAX (202) 260–7118, or via the INTERNET: Kooyoomji-an.Jack@EPAMAIL.EPA.GOV.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, for teleconference meetings, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week prior to a meeting or teleconference), may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting, or as soon as possible following a teleconference. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: September 26, 1995.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 95–24788 Filed 10–4–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–50812; FRL–4978–4]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part l72, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location, telephone number, or e-mail address cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

33688–EUP–2. Issuance. CFPI, c/o Registration and Regulatory Services, 5116 Wood Valley Drive, Raleigh, NC 27613. This experimental use permit allows the use of 4,510 pounds (2,255 pounds each year) of the herbicide 4-(1,1-dimethylethyl)-N-(1-methylpropyl)-2,6-dinitrobenzeneamine on 1,000 acres of tobacco (flue-cured) to evaluate the control of tobacco sucker. The program is authorized only in the States of Florida, Georgia, North Carolina, South Carolina, and Virginia. The experimental use permit is effective from August 3, 1995 to August 3, 1997. (Joanne Miller, PM 23, Rm. 237, CM #2, 703–305–7830, e:mail: miller.joanne@epamail.epa.gov)

11312–EUP–100. Issuance. Department of Agriculture, Agricultural Research Service, Rm. 358, Washington, DC 20250–0108. This experimental use permit allows the use of 192 pounds of the insecticides phloxine B and uranine on 1,150 acres of coffee, oranges, and grapefruit to evaluate the control of Mediterranean, Oriental, and Mexican fruit flies. The program is authorized only in the States of California, Hawaii, and Texas. The experimental use permit is effective from August 10, 1995 to August 10, 1997. A temporary exemption from the requirement of a tolerance has been established. (Robert Forrest, PM 14, Rm. 218, CM #2, 703–305–6600, e-mail: forrest.robert@epamail.epa.gov)

279–EUP–131. Extension. FMC Corporation, Agricultural Chemical Group, 1735 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 1,000 pounds of the herbicide N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide on 2,000 acres of corn, sorghum, soybeans, and wheat to evaluate the control of broadleaf weeds, grasses, and sedges. The program is authorized only in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from January 1, 1996 to January 1, 1997. Temporary tolerances for residues of the active ingredient in or on corn, sorghum, soybeans, and wheat have been established. (Joanne Miller, PM 23, Rm. 237, CM #2, 703–305–7830))

279–EUP–134. Extension. FMC Corporation, Agricultural Chemical Group, 1735 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 1,000 pounds of the herbicide N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide on 2,000 acres of corn, sorghum, soybeans, and wheat to evaluate the control of broadleaf weeds, grasses, and sedges. The program is authorized only in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from January 1, 1996 to January 1, 1997. Temporary tolerances for residues of the active ingredient in or on corn, sorghum, soybeans, and wheat have been established. This permit and the one above will use the same active ingredient but different formulations. (Joanne Miller, PM 23, Rm. 237, CM #2, 703–305–7830, e:mail: miller.joanne@epamail.epa.gov)

264–EUP–97. Issuance. Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. This experimental use permit allows the use of 3,200 pounds of the harvest aid ethephon and 400 pounds of cyclanilide on 3,000 acres of cotton to evaluate its effectiveness as a boll opening and defoliation treatment. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from August 11, 1995 to August 14, 1996. A temporary tolerance for residues of the active ingredient in or on cotton has been established. (Terri Stowe, PM 22, Rm. 261, CM #2, 703–305–6117, e-mail: stowe.terri@epamail.epa.gov)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: September 25, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–24587 Filed 10–4–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL 5312–3]

Proposed Administrative Settlement Under 122(h)(1) of CERCLA, Layton Salvage Yard Site, Layton, Davis County, UT

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Proposed Administrative Settlement Request for Public Comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9622(i), as amended by the Superfund Amendments and Reauthorization Act (CERCLA), notice is hereby given of a proposed administrative settlement concerning Layton Salvage Yard Site in Layton, Davis County, Utah. The proposed administrative settlement resolves an EPA claim under section 107 of CERCLA, 42 U.S.C. 9607, against Marvin L. Allgood, the U.S. Air Force, and the U.S. Defense Logistics Agency. The settlement requires the settling parties to pay $450,936.28 to the Hazardous Substances Superfund

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at EPA Regional VIII's Superfund Records Center, located on the 8th floor of the North Tower at 999 18th Street, Denver, Colorado.

DATE: Comments must be submitted on or before November 6, 1995.

ADDRESS: An original and two copies of comments must be sent to Robin E. Shearer, Enforcement Specialist, Layton Salvage Yard Site, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466.

FOR FURTHER INFORMATION CONTACT: Suzanne Bohan, Office of Regional Counsel (303) 294–7568

EPA alleges that Marvin L. Allgood, the U.S. Air Force, and the U.S. Defense Logistics Agency are responsible parties pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred at or in connection with the Layton Salvage Yard Site. By the terms of the proposed settlement, Marvin L. Allgood will pay $5,000.00 and the U.S. Air Force, and the U.S. Defense Logistics Agency will pay $445,936.28, for a total of $450,936.28 to the Hazardous Substances Superfund. In return, EPA agrees that these responsible parties shall have resolved any and all civil liability to EPA under section 107(a) of CERCLA, for reimbursement of response costs incurred at or in connection with the Site up through the date upon which EPA signs this Administrative Settlement Agreement.

John R. Giedt,

Chief, Emergency Response Branch.

[FR Doc. 95–24790 Filed 10–4–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Banc One Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 30, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455

East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio, and Premier Acquisition Corporation, Columbus, Ohio (to be renamed Banc One Louisiana Corporation); to merge with Premier Bancorp, Inc., Baton Rouge, Louisiana, and thereby indirectly acquire Premier Bank, N.A., Baton Rouge, Louisiana.

In connection with this application, Applicants also have applied to acquire Premmier Securities Corporation, Baton Rouge, Louisiana, and thereby engage in offering full-service brokerage activities and riskless principal activities in the purchase and sales of securities for its customers. Banc One received approval from the Board of Governors to engage in activities as agent in the private placement of all types of securities and acting as ''riskless principal,'' pursuant to Board order. See *Banc One Corporation*, 76 Federal Reserve Bulletin 756 (1990)); Terre Agency, Inc., Baton Rouge, Louisiana, a wholly-owned subsidiary of Premier Bancorp, Inc., Baton Rouge, Louisiana, and thereby engage in permissible insurance agency activities, pursuant to § 225.25(b)(8)(iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 29, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-24739 Filed 10-4-95; 8:45 am]

BILLING CODE 6210-01-F

Community Bank Shares of Indiana, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 20, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Community Bank Shares of Indiana, Inc., to acquire Community Bank of Southern Indiana, f.s.b., New Albany, Indiana, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. The geographic scope for this activity is Floyd and Harrison counties, located in Southern Indiana.

Board of Governors of the Federal Reserve System, September 29, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-24740 Filed 10-4-95; 8:45 am]

BILLING CODE 6210-01-F

North Fork Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 30, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. North Fork Bancorporation, Inc., Mattituck, New York; to acquire 100 percent of the voting shares of Extebank, Stony Brook, New York.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Community Bank Shares of Indiana, Inc., New Albany, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage Bank of Southern Indiana, Jeffersonville, Indiana, a proposed *de novo* bank.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Mountain West Financial Corp., Great Falls, Montana; to acquire 100 percent of the voting shares of Mountain West Bank of Great Falls, N.A., Great Falls, Montana, a *de novo* bank.

2. Rocky Mountain Bancorporation, Inc., Billings, Montana; to acquire 100 percent of the voting shares of N.E. Montana Bancshares, Inc., Plentywood, Montana, and thereby indirectly acquire Security State Bank Employee Stock Ownership Plan and Trust, Plentywood, Montana, and Security State Bank, Plentywood, Montana.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Hillister Enterprises II, Inc., Beaumont, Texas; to become a bank holding company by becoming the general partner of and by acquiring 1 percent of the voting shares of Umphrey II Family Limited Partnership, Beaumont, Texas, and thereby indirectly acquire Southeast Texas Bancshares, Inc., Beaumont, Texas, and Community Bank of Texas, Beaumont, Texas.

In connection with this application, Umphrey II Family Limited Partnership, Beaumont, Texas, also has applied to become a bank holding company by acquiring 47.6 percent of the voting shares of Southeast Texas Bancshares, Inc., Beaumont, Texas, and thereby

indirectly acquire Community Bank of Texas, Beaumont, Texas.

Board of Governors of the Federal Reserve System, September 29, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-24738 Filed 10-4-95; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 941 0015]

Federal News Service Group, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a District of Columbia corporation that sells verbatim news transcripts, and its president, from agreeing, or soliciting an agreement, to allocate customers or divide markets with any provider of news transcripts; entering into, continuing, or renewing any agreement that prevents Reuters America from competing with the respondents in the production, marketing or sale of news transcripts; renewing its news transcript supply agreement with Reuters America for five years; agreeing, or soliciting agreements, with competitors to fix or maintain resale prices for news transcripts; and requiring or pressuring any competitor to maintain or adopt any resale price for news transcripts.

DATES: Comments must be received on or before December 4, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Antalics, FTC/S–2627, Washington, DC 20580. (202) 326–2821.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission having initiated an investigation of certain acts and practices of Federal News Service Group Inc., and Cortes W. Randell, hereinafter sometimes referred to as ''Proposed Respondents'', and it now appearing that Proposed Respondents are willing to enter into an Agreement containing an Order to Cease and Desist from engaging in the acts and practices being investigated,

It Is Hereby Agreed by and between the Proposed Respondents, their attorney, and counsel for the Federal Trade Commission that:

1. Proposed Respondents Federal News Service Group, Inc. (''FNS'') is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its offices and principal place of business located at 620 National Press Building, Washington, D.C. 20045. FNS operates under the business name Federal News Service.

2. Proposed Respondents Cortes W. Randell is an individual who is President of Proposed Respondents FNS. His principal office and place of business is 620 National Press Building, Washington, D.C. 20045.

3. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint.

4. Proposed Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules of Practice, the Commission may, without further notice to the Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of the complaint and its decision containing the following Order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect as other orders. The Order may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondents' addresses as stated in this agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or agreement may be used to vary or contradict the terms of the Order.

8. Proposed Respondents have read the draft complaint and Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

For the purposes of this Order:

A. ''Respondents'' mean Federal News Service Group, Inc., its subsidiaries, divisions, and groups and affiliates controlled by Federal News Service Group, Inc., its successors and assigns, and its directors, officers, employees, agents, and representatives; Federal

News Service, its subsidiaries, divisions, and groups and affiliates controlled by Federal News Service, its successors and assigns, and its directors, officers, employees, agents, and representatives; and Cortes W. Randell, an individual, his employees, agents, and representatives, and entities controlled by him.

B. ''Reuters'' means Reuters America Inc., its directors, officers, representatives, delegates, agents, employees, successors, assigns and its subsidiaries and their successors and assigns.

C. ''News transcripts'' mean fast turnaround verbatim transcripts of statements made by governmental officials or others covering a variety of news events or individual news events or parts thereof that are usually but not always produced within three (3) hours of the event and transmitted in any manner to resellers and customers in the United States. The definition of ''news transcripts'' does not include the ''Daybook'', a daily calendar of news events not containing news transcripts, which is sold by Reuters to FNS.

D. ''News Transcript Provider'' means any person or entity which produces news transcripts, by itself or through an arrangement by which a third party produces news transcripts exclusively for that person or entity, and markets and sells such news transcripts as a daily news service on a subscription basis.

II

It Is Ordered that Respondents, directly, indirectly, or through any corporate or other device, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, attempting to enter into, or continuing or attempting to continue, any combination, agreement or understanding, either express or implied, with any News Transcript Provider to allocate or divide markets or customers with respect to news transcripts.

III

It Is Further Ordered that Respondents, directly, indirectly, or through any corporate or other device, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, or renewing any agreement between Respondents and Reuters that prevents Reuters from in any way competing with Respondents for the production, marketing or sale of news transcripts.

IV

It Is Further Ordered that for five (5) years from either the date this Order becomes final or July 31, 1995, whichever is later, Respondents directly or indirectly, or through any corporate or other device, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do cease and desist from entering into, continuing, or renewing any agreements with Reuters providing for the supply of news transcripts or the purchase or sale of news transcript customer contracts or accounts.

Provided that nothing in this Order shall prohibit Respondents from:

A. Selling a subscription for news transcripts to Reuters for Reuters internal use but not for resale; and

B. Contracting with Reuters for Reuters to supply Respondents with Reuters' Daybook.

It Is Further Ordered that Respondents, directly or indirectly, or through any corporate or other device, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Entering into, attempting to enter into, maintaining, enforcing, or attempting to enforce, any agreements or understandings with any competitor in the production, distribution, or sale of news transcripts, or any purchaser or reseller of news transcripts which is directly or indirectly supplied by Respondents, that fix, establish, control, or maintain resale prices or resale price levels for news transcripts; or

B. Requiring, coercing, or otherwise pressuring any competitor in the production, distribution or sale of news transcripts, or any purchaser or reseller of news transcripts which is directly or indirectly supplied by Respondents, to maintain, adopt, or adhere to any resale price or resale price level for news transcripts.

VI

It Is Further Ordered that Respondents shall:

A. Within thirty (30) days after the date this Order becomes final, distribute a copy of this Order and complaint to each of their employees and news transcript resellers.

B. Within ninety (90) days after the date this Order becomes final, and annually thereafter for five (5) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may, by written notice to the Respondents require, file a verified written report with the Commission setting forth in detail the manner and form in which the Respondents have complied and are complying with this Order.

C. Maintain and make available to Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by this Order.

D. Notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries, or any other change in Respondents which may affect compliance obligations arising out of this Order.

VII

It Is Further Ordered that this Order shall terminate as follows:

A. With respect to Federal News Service Group, Inc., this Order shall terminate twenty (20) years from the date this Order becomes final.

B. With respect to Cortes W. Randell, this Order shall terminate twenty (20) years from the date this Order becomes final, unless Cortes W. Randell totally ceases and does not resume his participation in the news transcript business in any capacity, in which case this Order shall terminate five (5) years from the date he ceased participating in the business.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Federal News Service Group, Inc. (''FNS''), which is located in Washington, DC, and its President, Cortes W. Randell.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that FNS and Cortes Randell engaged in acts and practices that have unreasonably restrained competition in the news transcript business in violation of Section 5 of the Federal Trade Commission Act. News transcripts are fast turnaround verbatim transcripts of a variety of news events primarily involving the federal government. Cortes Randell is the President of FNS, and the complaint alleges that he formulated, directed, and controlled the alleged acts and practices of FNS.

The complaint alleges that before May 1993, FNS and Reuters America Inc. (''Reuters'') directly competed with each other for news transcript customers. The news transcripts sold by Reuters were

produced by News Transcripts Inc. (''NTI''), and Reuters had the exclusive right to market these news transcripts.

The complaint alleges that by May 1993, FNS, Reuters and Cortes W. Randell agreed that Reuters would become a reseller of FNS-produced news transcripts and not sell news transcripts to FNS's customers; Reuters would not produce or sell any news transcripts which compete with FNS-produced news transcripts; and Reuters would not sell news transcripts below a minimum monthly price of $500.

The complaint further alleges that Reuters, in concert with FNS, induced NTI to cease producing news transcripts and not to compete with FNS. The complaint alleges that the purpose or effect of the agreements was to eliminate competition in the production and sale of news transcripts. The complaint alleges that after FNS became the sole producer of news transcripts, many customers of FNS received price increases.

The complaint also alleges that FNS and Cortes W. Randell, in concert with Reuters, coerced a reseller to raise the price of the reseller's news transcript database. The reseller raised its price to assure its continued supply of FNS-produced news transcripts.

FNS and Cortes W. Randell have signed a proposed consent agreement that prohibits them from agreeing to or attempting to agree to allocate customers or divide markets with any provider of news transcripts. For a five year period, the proposed consent agreement also prohibits FNS from having a supply agreement with Reuters or an agreement with Reuters to acquire or sell news transcript customer accounts. Additionally, the proposed consent agreement prohibits FNS or Cortes W. Randell from entering into agreements with Reuters that prevent Reuters from competing in the production, marketing, or sale of news transcripts. Finally, the proposed consent order prohibits FNS or Cortes W. Randell from fixing or attempting to fix resale prices for news transcriptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the terms of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–24757 Filed 10–4–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 951–0107]

First Data Corporation; Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require First Data, a Hackensack, New Jersey corporation to divest either the Western Union business acquired through its merger with First Financial Management Corporation or its own MoneyGram business to an entity that will operate it in competition with the merged company.

DATES: Comments must be received on or before December 4, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William J. Baer, Bureau of Competition, Federal Trade Commission, H–374, 6th Street & Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–2932, or Ann Malester, Bureau of Competition, Federal Trade Commission, S–2307, 6th Street & Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission (''Commission'') having initiated an investigation of the proposed acquisition of all of the stock of First Financial Management Corporation (''First Financial'') by First Data Corporation (''First Data''), and it now appearing that First Data, hereinafter sometimes referred to as ''proposed respondent,'' is willing to enter into an agreement containing an Order to divest certain assets and providing for other relief:

It is hereby agreed by and between proposed respondent, by its duly authorized officers and attorney, and counsel for the Commission that:

1. Proposed respondent First Data Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 401 Hackensack Avenue, Hackensack, New Jersey 07601.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed

respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed complaint and Order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that, as used in this Order (including Appendix I), the following definitions shall apply:

A. ''Respondent'' or ''First Data'' means First Data Corporation, its subsidiaries, divisions, groups and affiliates controlled by First Data Corporation, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

B. ''First Financial'' means First Financial Management Corporation, a corporation providing certain services including consumer money wire transfers through Western Union Financial Services, Inc.

C. ''Western Union'' means Western Union Financial Services, Inc., a wholly-owned subsidiary of First Financial Management Corporation, with its principal office and place of business located at One Mack Center Drive, Paramus, New Jersey 07652. Western Union provides and markets, among other things, consumer money wire transfer services.

D. ''Commission'' means the Federal Trade Commission.

E. ''Acquisition'' means the direct or indirect acquisition of control of First Financial by Respondent First Data.

F. ''Consumer Money Wire Transfer Service'' means the business of transferring the right to money using computer or telephone lines from one person through the location of a Selling Agent to a different person physically present at the location of a Selling Agent available to the general public through Selling Agents at retail outlets as currently offered by First Data and Western Union. ''Consumer Money Wire Transfer Service'' does not include transactions involving only one customer utilizing automatic teller machines and other point of sale devices, transactions involving debit cards, cash advances utilizing credit cards, home banking, prepaid telephone and cash cards, money orders, and utility bill payment services and further does not include the provision of data processing services to a Consumer Money Transfer Service business.

G. ''Selling Agent'' means a person or business, such as a check cashing store, a drug store, a supermarket, a postal service, a bus station, or a travel agency, that contracts with Consumer Money Wire Transfer Service to provide the Consumer Money Wire Transfer Service to customers.

H. ''MoneyGram Service'' means First Data's Consumer Money Wire Transfer Service marketed under the name ''MoneyGram.''

I. ''MoneyGram Assets'' or ''MoneyGram Business'' include all assets, properties, business and goodwill, tangible and intangible, related to the sale and marketing of the MoneyGram Service, including, but not limited to:

1. the MoneyGram trade name, trade dress, trade marks, and service marks; and,

2. a group of contracts with Selling Agents to provide the MoneyGram Service that provides a network of Selling Agents at least comparable to the group of Selling Agents under contract to provide the MoneyGram Service on May 1, 1995 other than the American Express Travel Related Services Company Travel Services Offices, based on characteristics of the Selling Agents such as the countries and cities served, number of Selling Agents, and type of outlet; provided, however, that the condition regarding the ''number of Selling Agents'' is satisfied if the number of Selling Agents is 10,000 or greater.

J. ''Western Union Service'' means Western Union's Consumer Money Wire Transfer Service.

K. ''Western Union Assets'' or ''Western Union Business'' include all assets, properties, business and goodwill, tangible and intangible, related to the sale and marketing of the Western Union Service, including, but not limited to:

1. the Western Union trade name, trade dress, trade marks, and service marks; and,

2. all contracts with selling agents to provide the Western Union Service.

L. ''Assets To Be Divested'' means the MoneyGram Assets or the Western Union Assets. The definition of ''Assets To Be Divested'' as well as any other provision in this order, however, shall not be construed to prohibit First Data from divesting both the MoneyGram Assets and the Western Union Assets to different acquirers.

M. ''Marketability, Viability, and Competitiveness'' of the Assets To Be Divested means that such assets when used in conjunction with the assets of the acquirer or acquirers are capable of providing a Consumer Money Wire Transfer Service substantially similar to the Consumer Money Wire Transfer Service that the Assets To Be Divested are capable of providing at the time of the Acquisition.

N. ''Non-public information'' means any information not in the public domain furnished to First Data in its capacity as a provider of data processing services by a Consumer Money Wire Transfer Service provider.

II

It is further ordered that:

A. Respondent shall divest, absolutely and in good faith, within twelve (12) months after the date this Order becomes final, the Assets To Be Divested and shall also divest such additional ancillary assets and businesses other than money order or utility bill payments businesses and effect such arrangements as are necessary to assure the Marketability, Viability, and Competitiveness of the Assets To Be Divested.

B. Respondent shall divest the Assets To Be Divested only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Assets To Be Divested is to ensure the continued use of the Assets To Be Divested in the same businesses in which the Assets To Be Divested are presently engaged, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Respondent shall make available to the acquirer or acquirers such First Data personnel, assistance and training as the acquirer or acquirers reasonably need to transfer technology and know-how, and First Data shall continue providing such personnel, assistance and training at no additional cost for a period of time sufficient to satisfy the acquirer's or acquirers' management that its personnel are appropriately trained in the business. However, Respondent shall not be required to continue providing such personnel, assistance

and training for more than six (6) months after the Assets To Be Divested are divested pursuant to this Order.

D. Pending divestiture of the Assets To Be Divested, Respondent shall take such actions as are necessary to maintain the marketability, Viability, and Competitiveness of the Assets To Be Divested, and to prevent the destruction, removal, wasting, deterioration or impairment of any of the Assets To Be Divested except for ordinary wear and tear. Provided, however, that nothing in this Paragraph shall be construed to prohibit First Data from competing in the ordinary course of business.

E. Respondent shall comply with all terms of the Agreement to Hold Separate, attached to this Order and made a part hereof as Appendix I. The Agreement to Hold Separate shall continue in effect until such time as Respondent has divested all Assets To Be Divested as required by this Order.

III

It is further ordered that:

A. If First Data has not divested, absolutely and in good faith, and with the Commission's prior approval, the Assets To Be Divested within the time period specified in Paragraph II.A. of this Order, the Commission may appoint a trustee to divest the Western Union Assets. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, First Data shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III. A. of this Order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Western Union Assets.

3. Within ten (10) days after appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III. B. 3. to accomplish the divestiture of the Western Union Assets, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Western Union Assets or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II. of this Order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Western Union Assets.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in this Paragraph of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the Western Union Assets.

12. The trustee shall report in writing to Respondent and the Commission every thirty (30) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that if First Data divests the MoneyGram Assets pursuant to Paragraph II. of this Order, First Data shall not enter into any Consumer Money Wire Transfer Service contract with any Selling Agent who is under contract to provide the MoneyGram Service at the time of the divestiture; provided, however, that First Data may enter into such a Consumer Money Wire Transfer Service contract (i) after the time the Selling Agent's contract with First Data would have expired had the divestiture not occurred, determined without regard to any contract extension or renewal that could occur after the date of the divestiture, (ii) if the contract is terminated in accordance with its terms other than as may be permitted as a result of the divestiture of the MoneyGram Assets or (iii) if the First Data Consumer Money Wire Transfer Service being provided is a transfer service utilizing automatic teller machines or any other point of sale device, and the MoneyGram Service contract upon its terms would not have barred the Selling Agent from entering into such a contract.

V

It is further ordered that nothing in this Order shall be construed as prohibiting First Data from entering into agreements with any Consumer Money Wire Transfer Service provider, including the acquirer or acquirers of the MoneyGram Business and the Western Union Business, for the provision of data processing services provided that:

A. Any such agreement entered into within eighteen (18) months of the date of the divestiture does not run for a period of more than two years;

B. No First Data officer, employee or agent who is involved in providing First Data's Consumer Money Wire Transfer Service receives non-public information of any other Consumer Money Wire Transfer Service provider;

C. First Data uses any non-public information obtained by First Data only in First Data's capacity as a provider of data processing services; and

D. First Data delivers a copy of this Order to each officer, employee or agent involved in marketing First Data's Consumer Money Wire Transfer Service or in providing data processing to any other Consumer Money Wire Transfer Service provider prior to First Data's obtaining any non-public information relating to the provider's business.

VI

It is further ordered that:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Respondent has fully complied with the provision of Paragraphs II. and III. of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II. and III. of this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. and III. of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraphs IV. and V. of this Order.

VII

It is further ordered that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

VIII

It is further ordered that, for the purpose of determining or securing compliance with this Order, subject to any legally recognized privilege, and upon written request with reasonable notice to First Data made to its General Counsel, Respondent shall permit any duly authorized representative of the Commission.

A. Access during office hours of First Data and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and

B. Upon five days' notice to Respondent and without restraint or interference from it, to interview officers, director, or employees of Respondent, who may have counsel present regarding such matters.

Appendix I

Agreement to Hold Separate

This Agreement to Hold Separate (the ''Agreement'') is by and between First Data Corporation (''First Data''), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 401 Hackensack Avenue, Hackensack, New Jersey 07601; and the Federal Trade Commission (''the Commission''), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the ''Parties'').

Premises

Whereas, First Data has proposed to acquire, directly or indirectly, all of the voting stock or substantially all of the assets of First Financial Management Corporation (''First Financial''), (hereinafter ''Acquisition''); and

Whereas, First Data, with its principal office and place of business located at 401 Hackensack Avenue, Hackensack, New Jersey 07601, provides and markets, among other things, Consumer Money Wire Transfer Services; and

Whereas, First Financial, with its principal office and place of business located at 3 Corporate Square, Suite 700, Atlanta, Georgia, 30329, provides and markets, among other things, Consumer Money Wire Transfer Services; and

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order (''Consent Order''), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the status quo ante of the MoneyGram Business during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Assets To Be Divested as described in Paragraph I. of the Consent Order and the Commission's right to have the MoneyGram Business continued as a viable competitor; and

Whereas, the purpose of the Agreement and the Consent Order is:

1. To preserve the viability of the MoneyGram Business pending the divestiture of the Assets To Be Divested as a viable and ongoing enterprise,

2. To remedy any anticompetitive effects of the Acquisition, and

3. To preserve the MoneyGram Business as an ongoing and competitive Consumer Money Wire Transfer Service until divestiture is achieved; and

Whereas, First Data's entering into this Agreement shall in no way be construed as an admission by First Data that the Acquisition is illegal; and

Whereas, First Data understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon the understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the Consent Order, it will not seek further relief from First Data with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement to Hold Separate and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Western Union Assets pursuant to the Consent Order, as follows:

1. First Data agrees to execute and be bound by the attached Consent Order.

2. First Data agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a. – 2.b., it will comply with the provisions of Paragraph 3. of this Agreement:

a. three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's rules;

b. the day after the divestiture required by the Consent Order has been completed.

3. To ensure the complete independence and viability of the MoneyGram Business and to assure that no competitive information is exchanged between the MoneyGram Business and First Data, First Data shall hold the MoneyGram Business separate and apart on the following terms and conditions:

a. First Data will appoint three individuals to manage and maintain the MoneyGram Business. These individuals (''the management team'') shall manage the MoneyGram Business independently of the management of First Data's other businesses. The individuals on the management team shall not be involved in any way in the marketing, selling or management of any other First Data business, including the Western Union Business.

b. The management team, in its capacity as such, shall report directly and exclusively to an independent auditor/manager, to be appointed by First Data. The independent auditor/manager shall have expertise in management and marketing. The independent auditor/manager shall have exclusive control over the operations of the MoneyGram Business, with responsibility for the management of the MoneyGram Business and for maintaining the independence of that business.

c. First Data shall not exercise direction or control over, or influence directly or indirectly the independent auditor/manager or the management team or any of its operations relating to the operations of the MoneyGram Business; provided, however, that First Data may exercise only such direction and control over the independent auditor/manager, management team and MoneyGram Business is necessary to assure compliance with this Agreement and with all applicable laws.

d. First Data shall maintain the Marketability, Viability, and Competitiveness of the MoneyGram Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their Marketability, Viability or Competitiveness.

e. Except for the management team, sales and marketing employees involved in the MoneyGram Business, and support service employees involved in the MoneyGram Business, such as Human Resource, Legal, Tax, Accounting, Insurance, and Internal Audit employees, First Data shall not permit any other First Data employee, officer, or director to be involved in the management of the MoneyGram Business. Sales and marketing employees involved in the MoneyGram Business, shall not be involved in any other First Data business, including the Western Union Business. Support service employees involved in the MoneyGram Business shall not be involved in the Western Union Business.

f. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to divest assets, First Data, other than sales and marketing employees involved in the MoneyGram Business, or support service employees involved in the MoneyGram Business, shall not receive or have access to, or the use of, any material confidential information about the MoneyGram Business, the activities of the management team, sales and marketing employees involved in the MoneyGram Business, or support service employees involved in the MoneyGram Business in managing that business not in the public domain, nor shall the management team, sales and marketing employees involved in the MoneyGram Business, or support service employees involved in the MoneyGram Business receive or have access to, or the use, any material confidential information about the Western Union Business or the activities of First Data in managing the Western Union Business not in the public domain. Any such information that is obtained pursuant to this subparagraph shall be used only for the purpose set forth in this subparagraph. (''Material confidential information,'' as used herein, means competitively sensitive or proprietary information not independently known to:

(a) First Data, with regard to the MoneyGram Business, from sources other than the management ream, sales and marketing employees involved in the MoneyGram Business, or support service employees involved in the MoneyGram Business; or

(b) the management team, sales and marketing employees involved in the MoneyGram Business, or support service employees involved in the MoneyGram Business with regard to the Western Union Business and includes but is not limited to customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

g. First Data shall not change the composition of the management team unless the independent auditor/manager consents. The independent auditor/manager shall have the power to remove members of the management team and to require First Data to appoint replacement members to the management team in the same manner as provided in Paragraph 3.a. of this Agreement to Hold Separate.

h. First Data shall circulate to all its employees involved with the MoneyGram Business, Western Union Business, or the data processing services provided to either the MoneyGram or Western Union Businesses, and appropriately display, a notice of this Hold Separate Agreement and Consent Order in the form attached hereto as Attachment A.

i. First Data shall make available for use in the MoneyGram Business until divestiture of the Assets To Be Divested is accomplished an amount of money for advertising and trade promotion of the MoneyGram Service not lower than $24 million annually, with no less than $10 million for any two consecutive quarters. First Data shall pay all direct costs and indirect overheads for the MoneyGram Business. The MoneyGram Business shall not be charged with the compensation and expenses of the independent auditor/manager.

j. First Data shall make available for use in the MoneyGram Business until divestiture of the Assets To Be Divested an amount of money needed to provide an additional 20 percent sales commission to the MoneyGram Business sales force on all MoneyGram agent renewals and MoneyGram agent recruitments above and beyond the 1995 sales commission rate for MoneyGram agent renewals and MoneyGram agent recruitments.

k. The independent auditor/manager shall serve at the cost and expense of First Data. First Data shall indemnify the independent auditor/manager against any losses or claims of any kind that might arise out of his or her involvement under this Agreement to Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the independent auditor/manager.

l. If the independent auditor/manager ceases to act or fails to act diligently, a substitute auditor/manager shall be appointed in the same manner as provided in Paragraph 3.b. of this Agreement to Hold Separate.

m. The independent auditor/manager shall have access to and be informed about all

companies who inquire about, seek or propose to buy the MoneyGram Assets. First Data may require the independent auditor/manager to sign a confidentiality agreement prohibiting the disclosure of any material confidential information gained as a result of his or her role as independent auditor/manager to anyone other than the Commission.

n. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 3.a.–3.n. hereof, shall be subject to a majority vote of the management team. In case of a tie, the independent auditor/manager shall cast the deciding vote.

o. The independent auditor/manager shall report in writing to the Commission every thirty (30) days concerning the independent auditor/manager's efforts to accomplish the purposes of this Agreement to Hold Separate.

4. Should the Federal Trade Commission seek in any proceeding to compel First Data to divest itself of the MoneyGram Assets or the Western Union Assets, or to seek any other equitable relief, First Data shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. First Data also waives all rights to contest the validity of this Agreement.

5. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to First Data made to its General Counsel, First Data shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of First Data and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of First Data relating to compliance with this Agreement; and

b. Upon five days' notice to First Data, and without restraint or interference from it, to interview officers or employees of First Data, who may have counsel present, regarding any such matters.

6. This Agreement shall not be binding until approved by the Commission.

Attachment A

Notice of Divestiture and Requirement for Confidentiality

First Data Corporation (''First Data'') has entered into Consent Agreement and Agreement To Hold Separate with the Federal Trade Commission relating to the divestiture of the MoneyGram Business or the Western Union Business. Until after the Commission's Order becomes final and First Data's interest in either the MoneyGram Business or the Western Union Business is divested, the MoneyGram Business must be managed and maintained as a separate, ongoing business, independent of all other First Data businesses and independent of Western Union Business. All competitive information relating to the MoneyGram Business, except information received by First Data in connection with the provision of data processing services to the MoneyGram Business as described in and protected by the confidentiality provision of Paragraph V. of the Consent Order, must be retained and maintained by the persons involved in the MoneyGram Business on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other First Data business, including the Western Union Business. Similarly, all such persons involved in the Western Union Business shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing competitive information about such business to or with any person whose employment involves the MoneyGram business.

Any violation of the Consent Agreement or the Agreement to Hold Separate, incorporated by reference as part of the Consent Order, may subject First Data to civil penalties and other relief as provided by law.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a proposed consent order from First Data Corporation (''First Data''), under which First Data would divest either the MoneyGram or Western Union consumer money wire transfer business.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

On June 13, 1995, First Data and First Financial Management Corporation (''First Financial'') agreed to merge in a stock swap valued at $6.7 billion. Under the proposed agreement, First Financial shareholders would receive 1.5859 shares of First Data stock for each share of First Financial.

The proposed complaint alleges that the proposed merger, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the market for consumer money wire transfer services. A consumer money wire transfer is a unique method of transferring cash between two people in different geographic locations that is quick, secure and convenient to use. First Data currently provides consumer money wire transfers through its MoneyGram business. First Financial currently provides consumer money wire transfers through its subsidiary, Western Union Financial Services, Inc. These two companies are currently the only two domestic consumer money wire transfer services. No potential entrant is well-situated to overcome the high barriers to entry and deter or counteract the anticompetitive effects of the proposed merger. As a consequence, the combination of these two companies is likely to result in a monopoly and lead to anticompetitive effects such as higher prices and reduced services in the United States consumer money transfer market.

The proposed Consent Order would remedy the alleged violation by replacing the lost competition that would result from the merger of First Data and First Financial. The proposed Consent Order provides that, within twelve (12) months after the date the Order becomes final, First Data shall divest either the consumer money wire transfer assets of MoneyGram or those of Western Union. If First Data is unable to divest these assets during the allotted time period, then a trustee may be appointed to divest the Western Union assets within a (12) month period. If, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the time period for divestiture can be extended by the Commission, or, in the case of a court-appointed trustee, by the court. The Commission, however, may extend this period only two (2) times.

A Hold Separate Agreement signed by First Data provides that until the MoneyGram or Western Union consumer money wire transfer assets are divested, the MoneyGram assets will be operated independently of the Western Union assets. Under the provisions of the Order within sixty (60) days following the date this Order becomes final, and every sixty (60) days thereafter until First Data has completely divested its interest in either the MoneyGram or Western Union assets.

The Order also provides that, if First Data divests the MoneyGram assets, First Data would then be prohibited from entering into a contract with any selling agent who is under contract to provide the MoneyGram service at the time of the divestiture. However, the Order does permit First Data to enter into a contract with such an agent after the agent's contract with First Data would have expired absent the divestiture.

The Order expressly allows First Data to supply data processing services to other consumer money wire transfer suppliers, provided that it shield any First Data employee who is involved in providing First Data's consumer money wire transfer provider. This provision will allow competing consumer money wire transfer companies to use First Data's data processing service while preventing the facilitation of collusion that could occur as a result of the transfer of proprietary information from other consumer money wire transfer providers to First Data, through its role as a data processor.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Statement of Commissioner Christine A. Varney, Merger of First Financial Management Corp. and First Data Corp. [File No. 951–0107]

The First Financial/First Data merger represents another milestone in the fast-

paced development of electronic payment systems. While combinations such as this may have efficiency driven, pro-competitive effects, I remain concerned about increased concentration in the merchant acquirer services industry. This market is growing dramatically, and is increasingly central to back-end processing of credit card purchases. I expect that we will soon see additional acquisitions in the merchant acquirer services industry and, in that light, I have asked the Staff of the Commission to continue to monitor the competitive situation in this evolving market.

[FR Doc. 95–24759 Filed 10–4–95; 8:45 am]
BILLING CODE 6750–01–M

[File No. 951–0015]

Reuters America Inc.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would, among other things, prohibit a New York-based distributor of fast-turnaround verbatim news transcripts from agreeing to or attempting to agree to allocate customers or divide markets with any provider of news transcripts.

DATES: Comments must be received on or before December 4, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Michael E. Antalics, Bureau of Competition, Federal Trade Commission, S–2627, 6th Street & Pennsylvania Ave., N.W., Washington, DC 20580. (202) 326–2821.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission having initiated an investigation of certain acts and practices of Reuters America Inc., hereinafter sometimes referred to as ''Proposed Respondent'', and it now appearing that Proposed Respondent is willing to enter into an Agreement containing an Order to Cease and Desist from engaging in the acts and practices being investigated,

It Is Hereby Agreed by and between the Proposed Respondent, their attorney, and counsel for the Federal Trade Commission that:

1. Proposed Respondent Reuters America Inc. (''Reuters'') is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 1700 Broadway, New York, New York 10019.

2. Proposed Respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules of Practice, the Commission may, without further notice to the Proposed Respondent, (1) issue its complaint corresponding in form and substance with the draft of the complaint and its decision containing the following Order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect as other orders. The Order may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to the attention of the Office of the General Counsel at the Proposed Respondent's addresses as stated in this agreement shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or agreement may be used to vary or contradict the terms of the Order.

7. Proposed Respondent has read the draft complaint and Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

For the purposes of this Order:

A. *Respondent* means Reuters America Inc., its subsidiaries, divisions, and groups and affiliates controlled by Reuters America Inc., its successors and assigns, and its directors, officers, employees, agents, and representatives.

B. *FNS* means Federal News Service Group, Inc/, its directors, officers, representatives, delegates, agents, employees, successors, assigns and its subsidiaries and their successors and assigns; and Federal News Service, its directors, officers, representatives, delegates, agents, employees, successors, assigns and its subsidiaries and their successors and assigns.

C. *News transcripts* mean full-text fast turnaround verbatim transcripts of government-related events that are usually but not always produced within

three (3) hours of the event and transmitted in any manner to resellers and customers in the United States. The definition of ''news transcripts'' refers to the type of full-text verbatim news transcript service formerly marketed by Respondent under the name ''the Federal News Reuter Transcript Service.'' News transcripts do not include news, information or data of the type generally included in Respondent's other news services which may incorporate some quotations or partial excerpts from government-related events.

D. *News Transcript Provider* means any person or entity which produces news transcripts, by itself or through an arrangement by which a third party produces news transcripts exclusively for that person or entity, and markets and sells such news transcripts as a daily service on a subscription basis.

II

It Is Ordered that Respondent, directly, indirectly, or through any corporate or other device, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, does forthwith cease and desist from entering into, attempting to enter into, or continuing or attempting to continue, any combination, agreement or understanding, either express or implied, with any News Transcript Provider to allocate to divide markets or customers with respect to news transcripts.

III

It Is Further Ordered that Respondent, directly, indirectly, or through any corporate or other device, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, or renewing any agreement between Respondent and FNS that prevents Respondent from in any way competing with FNS for the production, marketing or sale of news transcripts.

IV

It Is Further Ordered that for five (5) years from either the date this Order becomes final or July 31, 1995, whichever is later, Respondent directly or indirectly, or through any corporate or other device, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do cease and desist from entering into, continuing, or renewing any agreements with FNS providing for the supply of news transcripts or the purchase or sale of news transcript customer contracts or accounts.

Provided that nothing in this Order shall prohibit Respondent from:

A. Purchasing a subscription for news transcripts from FNS for Respondent's own use but not for resale; and

B. Contracting with FNS for supplying FNS with Respondent's Daybook.

V

It Is Further Ordered that Respondent, directly or indirectly, or through any corporate or other device, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, attempting to enter into, maintaining, enforcing, or attempting to enforce, any agreements or understandings (1) with any competitor in the production, distribution, or sale of news transcripts, that fix, establish, control, or maintain resale prices or resale price levels for news transcripts, or (2) with any purchaser or reseller of news transcripts which is directly or indirectly supplied by Respondent, that fix, establish, control, or maintain resale prices or resale price levels that such purchaser or reseller charges for news transcripts.

VI

It Is Further Ordered that Respondent shall:

A. Within thirty (30) days after the date this Order becomes final, distribute a copy of this Order and complaint to each of its officers and to each of its employees engaged in the production or sale of news transcripts.

B. Within ninety (90) days after the date this Order becomes final, and annually thereafter for five (5) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may, by written notice to the Respondent require, file a verified written report with the Commission setting forth in detail the manner and form in which the Respondent has complied and is complying with this Order.

C. Maintain and make available to Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by this Order.

D. Notify the Commission at least thirty (30) days prior to any proposed change in the Respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or the creation or dissolution or subsidiaries or any other change in Respondent which may affect compliance obligations arising out of the Order.

VII

It Is Further Ordered that this Order shall terminate twenty (20) years from the date this Order becomes final.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Reuters America Inc. (''Reuters''), which is located in New York City.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that Reuters engaged in acts and practices that have unreasonably restrained competition in the news transcript business in violation of Section 5 of the Federal Trade Commission Act. News transcripts are fast turnaround verbatim transcripts of a variety of news events primarily involving the federal government.

The complaint alleges that from 1988 through May 1993, Reuters and Federal News Service Group, Inc. (''FNS''), the dominant sellers of news transcripts, directly competed with each other for customers. The news transcripts sold by Reuters were produced by News Transcripts Inc. (''NTI''), and Reuters had the exclusive right to market these news transcripts.

The complaint alleges that by May 1993, Reuters and FNS agreed that Reuters would not sell news transcripts to FNS's customers; Reuters would sell FNS-produced news transcripts; Reuters would not produce or sell any news transcripts that compete with FNS-produced news transcripts for the term of their supply agreement plus five years; and Reuters would sell news transcripts at or above the minimum price of $500 per month.

The complaint further alleges that Reuters, in concert with FNS, induced NTI to cease producing news transcripts and not to compete with FNS. The complaint alleges that the effect of these agreements was to unreasonably restrain competition in the production and sale of news transcripts. The complaint alleges that after FNS became the sole producer of news transcripts, many customers of FNS received price increases.

The complaint also alleges that Reuters assisted FNS in obtaining a database reseller's agreement to raise the price of the reseller's news transcript database. The reseller raised its price to assure its contained supply of FNS-produced news transcripts.

Reuters has signed a proposed consent agreement that prohibits it from agreeing to or attempting to agree to allocate customers or divide markets with any provider of news transcripts. For a five year period, the proposed consent agreement also prohibits Reuters from entering into any agreements with FNS for the supply of news transcripts or for the purchase or sale of news transcript customer contracts or accounts. Additionally, the proposed consent agreement prohibits

Reuters from entering into any agreement with FNS that prevents Reuters from competing in the production, marketing, or sale of news transcripts. Finally, the proposed consent order prohibits Reuters from entering into any agreements with any news transcript competitor or reseller that fix the resale prices for news transcripts.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the terms of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–24758 Filed 10–4–95; 8:45 am]

BILLING CODE 6750–01–M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Scholarships: Closing Date for Nominations From Eligible Juniors at Four-Year Institutions of Higher Education

Notice is hereby given that, pursuant to the authority contained in the Harry S. Truman Memorial Scholarship Act, Public Law 93–642 (20 U.S.C. 2001), nominations are being accepted from eligible four-year institutions of higher education for Truman Scholarships. Procedures are prescribed at 45 CFR Part 1801, and where published in the Federal Register on September 23, 1991 (54 FR 48076).

In order to be assured of consideration, all documentation in support of nominations must be received by The Truman Scholarship Review Committee, Recognition Programs, Operations Division, 2255 North Dubuque Road, Iowa City, Iowa 52243 no later than December 1, 1995.

Louis H. Blair,

Executive Secretary.

[FR Doc. 95–24736 Filed 10–4–95; 8:45 am]

BILLING CODE 9500–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0314]

Professional Product Labeling; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing an open public meeting to discuss prescription drug product labeling designed for health care professionals. The purpose of this meeting is to present background information and research concerning how approved prescription drug product labeling (package inserts) may be adapted to communicate more effectively to professional users, especially health care practitioners in clinical practice. FDA has developed an initial prototype of approved product labeling that summarizes the important information in drug product labeling and reorganizes existing sections. FDA is seeking comments on the value of these possible revisions to professional product labeling, and therefore FDA encourages interested individuals to attend this meeting to obtain relevant information on which to base their comments.

DATES: The public meeting will be held on Monday, October 30, 1995, from 9 a.m. to 3:30 p.m. Written comments will be accepted until January 19, 1996.

ADDRESSES: The public meeting will be held at the Gaithersburg Hilton Hotel, 620 Perry Pkwy., Gaithersburg, MD 20879. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the initial prototype can be obtained from the Center for Drug Evaluation and Research's (CDER's) FAX-on-Demand system, 301–827–0577 or 1–800–342–2722 (Document No. 0212). A transcript and summary of the meeting may be seen at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kimberly Topper or Angie Whitacre, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

SUPPLEMENTARY INFORMATION: The major purpose of prescription drug product labeling is to help ensure that prescribing health care professionals have the information necessary to prescribe products in a safe and effective manner. When the agency determines that a sponsor has provided the requisite scientific data to allow marketing of a product in the United States, the approved labeling communicates the conclusions of FDA review of the data in the product's new drug application (NDA). Because the NDA review process provides access to the raw data from clinical trials, the product labeling may provide the only comprehensive, independently reviewed source of medical/scientific information about newly approved products and new indications for older products.

The approved labeling also serves as the basis for product promotion. FDA regulations specify that all advertising claims made about a product be consistent with its approved labeling (21 CFR 202.1(e)(4)). The approved labeling serves as the basis for fulfilling the requirement of the Federal Food, Drug, and Cosmetic Act (the act) that prescription drug advertising include ''* * * information in brief summary relating to side effects, contraindications, and effectiveness * * *.'' (section 502(n) of the act (21 U.S.C. 352(n)).

The approved labeling's multiple purposes have contributed to its evolution. Product labeling has become increasingly detailed and lengthy over the past several years. FDA is concerned that these changes not undermine the usefulness of labeling for providing important information to prescribers. Recent research conducted by the agency evaluated physicians' perceptions of labeling's usefulness for their clinical practice. While the data were consistent with previous studies demonstrating that parts of labeling are extensively used, they also suggested potential areas where improvements could be made.

FDA has responded to these concerns and data by examining: (1) How important information in approved labeling could be more effectively accessed by prescribers, and (2) how a summary of important information could be designed and added to the approved product labeling. As a result, FDA has developed a new prototype for approved product labeling. A copy of this initial prototype can be obtained from CDER's FAX-on-Demand system (Document No. 0212) or from the information contact person (address above). This initial prototype represents a preliminary draft; it is being provided only for the purpose of helping to facilitate the public's preparation for the meeting. This initial prototype may change, even prior to the meeting. FDA is interested in receiving comments on the version of the prototype that will be presented at the public meeting.

Under 21 CFR 10.65(b), the Commissioner of Food and Drugs has concluded that it would be in the public interest to hold an open public meeting to discuss this initial prototype and the value of possible revisions to professional product labeling. This

public meeting is designed to give interested parties the necessary information to understand more fully the background, purpose, and process of prototype development.

The meeting will be informal, i.e., any interested person may attend and participate in the discussion without prior notice to the agency. The meeting will begin with presentations by FDA, followed by a panel discussion. The panel will be composed of representatives from industry and from medical and pharmaceutical information professional groups. The final part of the meeting will be devoted to questions and comments from meeting attendees.

A transcript and summary of the meeting will be available from the Dockets Management Branch (address above) approximately 10 business days after the meeting at a cost of 10 cents per page.

Interested persons may submit to the Dockets Management Branch (address above) comments on the initial prototype and the meeting. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Written comments will be accepted until January 19, 1996, to permit time for all interested persons to submit data, information, or views on this subject.

Dated: September 29, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–24815 Filed 10–4–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (Federal Register, Vol. 59, No. 60, pp. 14628–14630, dated Tuesday, March 29, 1994) is amended to reflect the separation of HCFA support staff from the Provider Reimbursement Review Board (PRRB). It should be noted that this change does not affect the PRRB as prescribed by the Social Security Act.

The specific amendments to Part F are as follows:

- Section F.10. (Organization) is amended by deleting F.10.A.1. in its entirety and replacing it with the following:

1. Office of Hearings (FA–5)

- Provides staff support to the Provider Reimbursement Review Board (PRRB) and the Medicare Geographic Classification Review Board (MGCRB).
- Conducts Medicare and Medicaid hearings on behalf of the Secretary or the Administrator that are not within the jurisdiction of the Department Appeals Board, the Social Security Administration's Office of Hearings and Appeals, the PRRB, the MGCRB, or the States.
- Facilitates and supports hearings and assists members of the Board(s) in the preparation of final decision documents.

Dated: September 27, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–24761 Filed 10–4–95; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

AIDS Research Program Evaluation Working Group; Notice of Meeting

Notice is hereby given of the meeting of the NIH AIDS Research Program Evaluation Working Group Area Review Panel on Vaccine Research and Development on October 16, 1995 from 9:00 am to 5:00 pm at the Days Inn Crystal City, 2000 Jefferson Davis Highway, Arlington, Virginia. The meeting will be open to the public from 2:00 pm to 5:00 pm, and the closed portion will be from 9:00 am to 1 pm.

The NIH Revitalization Act of 1993 authorizes the Office of AIDS Research (OAR) to evaluate the AIDS research activities of NIH. The NIH AIDS Research Program Evaluation Working Group was established by the OAR to carry out this major evaluation initiative, reviewing and assessing each of the components of the NIH AIDS research endeavor to determine whether those components are appropriately designed and coordinated to answer the critical scientific questions to lead to better treatments, preventions, and a cure for AIDS. Six area Review Panels were also established to address the following research areas: Natural History and Epidemiology; Etiology and Pathogenesis; Clinical Trials; Drug Discovery; Vaccines; and Behavioral and Social Sciences Research.

The purpose of the meeting is to seek input from individuals and organizations interested in the evaluation of AIDS research in the areas of vaccine research and development. Examples of areas under consideration by the panel include identification of potential vaccine approaches, design and preclinical testing of candidate AIDS in animals—both small laboratory animals and nonhuman primates, clinical testing of candidate vaccines in human volunteers in phase I and II (safety and immunogenicity studies) and preparation for large scale testing in populations at high risk of acquiring HIV–1 infection. The NIH AIDS Research Program Evaluation Working Group will develop recommendations to be made to the Office of AIDS Research Advisory Council that address the overall NIH AIDS research initiatives, both intramural and extramural, and identify long-range goals in the relevant areas of science. These recommendations will provide the framework for future planning and budget development of the NIH AIDS research program.

There will be a closed session from 9:00 am to 1 pm to update the Panel members on privileged information on institute and center grant and contract portfolios.

The open session from 2 pm to 5:00 pm will begin with a brief overview of panel activities by members of the panel. The remainder of the meeting will be devoted to presentations from individuals and organizations. The session is open to the public; however, attendance may be limited by seat availability.

Comments should be confined to statements related to the current status of NIH AIDS research in the areas of AIDS vaccine research and development and recommendations for consideration by the panel in assessing and reviewing the relevant research in these areas.

Only one representative of an organization may present oral comments. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations must submit a letter of intent to present comments and three (3) typewritten copies of the presentation, along with a brief description of the organization represented, to the attention of Dr. Bonnie J. Mathieson, Office of AIDS Research, NIH, 31 Center Drive, MSC 2340, Building 31, Room 4C06, Bethesda, MD 20892–2340, (301) 496–4564, FAX: (301) 402–8638. Letters of intent and copies of presentations must be received no later than 4:00 pm EDT on Friday, October 13.

Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be

allowed to make a brief oral presentation at the conclusion of the meeting, if time permits, and at the discretion of the Chairperson.

Individuals wishing to provide only written statements should send three (3) typewritten copies of their comments, including a brief description of their organization, to the above address no later than 4 pm EDT on October 13. Statements submitted after that date will be accepted. They may not, however, be made available to the Area Review Panel prior to the meeting, though they will be provided subsequently as written testimony.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Mathieson in advance of the meeting.

Dated: September 29, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–24814 Filed 10–4–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meetings:

Name of SEP: Central Immunology Lab for AIDS Vaccine Clinical Trials.
Date: October 20, 1995.
Time: 11:00 a.m.
Place: Solar Bldg., Room 1A3, 6003 Executive Blvd., Bethesda, MD 20892.
Contact Person: Dr. Dianne E. Tingley, Scientific Review Admin., Solar Bldg., Room 4C07, 6003 Executive Boulevard, Bethesda, MD 20892, (301) 496–0818.
Purpose/Agenda: To evaluate contract proposals.

Name of SEP: National Cooperative Drug Groups for the Treatment of HIV Infection.
Date: October 30–31, 1995.
Time: 8:30 a.m.
Place: Holiday Inn Gaithersburg, Washingtonian Room, 2 Montgomery Village Avenue, Gaithersburg, MD 20879, (301) 948–8900.
Contact Person: Dr. Vassil Georgiev, Scientific Review Admin., Solar Bldg., Room 4C04, 6003 Executive Boulevard, Bethesda, MD 20892, (301) 496–8206.
Purpose/Agenda: To evaluate grant applications.

Name of SEP: Research on Hantavirus and Other Emerging Viral Threats.
Date: November 6–8, 1995.
Time: 8:30 a.m.
Place: Bethesda Ramada Hotel, 8400 Wisconsin Avenue, Bethesda, MD 20814, (301) 654–1000.
Contact Person: Christopher Beisel, Scientific Review Admin., Solar Bldg., Room 4C03, 6003 Executive Boulevard, Bethesda, MD 20892, (301) 402–4596.
Purpose/Agenda: To evaluate grant applications.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunmology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 29, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–24813 Filed 10–4–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings of Subcommittees B, C, and D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of meetings of Subcommittees B, C, and D of the National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK).

These meetings will be open to the public as indicated below to discuss Council decisions on training matters and updates on NIH training policy. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winnie Martinez, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, Room 9A07, Bethesda, Maryland 20892, 301–496–6623, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the contact person.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person at least two weeks prior to the meeting date.

Name of Committee: National Diabetes and Digestive and Kidney Diseases, Special Grants Review Committee, Subcommittee B.
Date: October 26–27, 1995.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Open: October 26, 5:30 p.m.–7 p.m.
Purpose/Agenda: To discuss administrative details.
Closed: October 27, 8 a.m.–adjournment.
Purpose/Agenda: To review and evaluate research grant applications.
Contact Person: Michael W. Edwards, Ph.D., Natcher Building, Room 6AS–37J, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8892.

Name of Committee: National Diabetes and Digestive and Kidney Diseases, Special Grants Review Committee, Subcommittee C.
Date: October 26–27, 1995.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Open: October 26, 5:30 p.m.–7 p.m.
Purpose/Agenda: To discuss administrative details.
Closed: October 27, 8 a.m.–adjournment.
Purpose/Agenda: To review and evaluate research grant applications.
Contact Person: Daniel Matsumoto, Ph.D., Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8894.

Name of Committee: National Diabetes and Digestive and Kidney Diseases, Special Grants Review Committee, Subcommittee D.
Date: October 26–27, 1995.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Open: October 26, 5:30 p.m.–7 p.m.
Purpose/Agenda: To discuss administrative details.
Closed: October 27, 8 a.m.–adjournment.
Purpose/Agenda: To review and evaluate research grant applications.
Contact Person: Ann A. Hagan, Ph.D., Natcher Building, Room 6AS–43G, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8891.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology

and Hematology Research, National Institutes of Health)

Dated: September 29, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–24811 Filed 10–4–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Nursing Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Nursing Science Review Committee.

Date: October 25–27, 1995.

Time: 8:30 a.m. until adjournment.

Place: Holiday Inn Chevy Chase, Palladian West Conference Room, 5520 Wisconsin Avenue, Bethesda, Maryland 20815.

Contact Person: Dr. Mary Stephens-Frazier, 9000 Rockville Pike, Building 45, Room 3AN.12, Bethesda, Maryland 20892, (301) 594–5971.

Purpose: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health.)

Dated: September 29, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–24810 Filed 10–4–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Meeting of the Deafness and Other Communication Disorders Programs Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Deafness and Other Communication Disorders Programs Advisory Committee.

Date: October 27, 1995.

Place: National Institutes of Health, 9000 Wisconsin Avenue, Building 31C, Conference Room 6, Bethesda MD 20892.

Time: 8 am to 5 pm.

Purpose/Agenda: To hold discussion on Extramural Research programs.

Contact Person: Ralph F. Naunton, M.D., Director, Division of Human Communication, NIH/NIDCD, 6120 Executive Boulevard, MSC 7180, Bethesda MD 20892–7180, 301–496–1804.

The entire meeting will be open to the public, with attendance limited to space available. A summary of the meeting and a roster of the members may be obtained from Dr. Naunton's office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodation, please contact Dr. Naunton prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: September 29, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–24812 Filed 10–4–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 60 FR 17792–95, dated April 7, 1995) is amended to reflect the establishment of the Office of Women's Health within the Office of the Director, Centers for Disease Control and Prevention (CDC).

Section HC-B, Organization and Functions, is hereby amended as follows:

After the functional statement for the *CDC Washington Office (HCA6),* insert the following:

Office of Women's Health (HCA7). (1) Provides leadership, guidance, and coordination on policy, program planning, and development of CDC activities related to women's health; (2) provides advice to the Director, CDC, on women's health-related issues; (3) establishes short-range and long-range goals and objectives for women's health and facilitates coordination of women's health activities within the Agency that relate to prevention, research, education and training, service delivery, and policy development; (4) identifies needs in women's health that should be addressed by the Agency and provides funding assistance to support projects that address those gaps; (5) advocates for women's health issues and consults with the Public Health Service (PHS), other Federal agencies, State and local health departments, non-governmental organizations, health professionals, consumer organizations, and other individuals and groups, as appropriate, on the policies and activities of the Agency with regard to women; (6) coordinates agency activities on women's health with the PHS Office on Women's Health, and the Director serves as chair of CDC's Women's Health Committee.

Effective Date: September 27, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–24762 Filed 10–4–95; 8:45 am]

BILLING CODE 4160–18–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers

Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984, (formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

CompuChem Laboratories, Inc., Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263, (formerly: Roche CompuChem Laboratories, Inc., Special Division, A Member of the Roche Group, CompuChem Laboratories, Inc.—Special Division)

CORNING Clinical Laboratories, South Central Divison, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 (formerly: Metropolitan Reference Laboratories, Inc.)

CORNING Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 800–526–0947, (formerly: Damon Clinical Laboratories, Damon/MetPath)

CORNING Clinical Laboratories Inc., 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888, (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories)

CORNING MetPath Clinical Laboratories, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000, (formerly: MetPath, Inc.)

CORNING National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485, (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science)

CORNING Nichols Institute, 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200, (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT))

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–836–3093

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 813–936–5446/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672, (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300, (formerly: Harrison & Associates Forensic Laboratories)

HealthCare/MetPath, 24451 Telegraph Rd., Southfield, MI 48034, 800–444–0106 ext. 650, (formerly: HealthCare/Preferred Laboratories)

Holmes Regional Medical Center Toxicology Laboratory, 5200 Babcock St., N.E., Suite 107, Palm Bay, FL 32905, 407–726–9920

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927, (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100, (formerly: National Health Laboratories Incorporated)

Laboratory Corporation of America, d.b.a. LabCorp Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522, (formerly: National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division)

Laboratory Corporation of America, 21903 68th Ave. South, Kent, WA 98032, 206–395–4000, (formerly: Regional Toxicology Services)

Laboratory Corporation of America, 2540 Empire Dr., Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627 / Inside NC: 800–642–0894, (formerly: National Health Laboratories Incorporated)

Laboratory Corporation of America Holdings, 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286, (formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986, (formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961
Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835
MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515
Medical College Hospitals Toxicology Laboratory,, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213
Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466
Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199
MetPath Laboratories, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–931–7200, (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon)
MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808 (x4512)
National Psychopharmacology Laboratory, Inc., 9320 Park W. Blvd., Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 503–687–2134
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294, (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627, (formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272
Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640
Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–244–8800
Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 904–787–9006, (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 404–934–9205, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010, (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 1737 Airport Way South, Suite 200, Seattle, WA 98134, 206–623–8100
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373, (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191, (formerly: MetWest-BPL Toxicology Laboratory)

The following laboratory withdrew from the Program on September 6, 1995: ACCU-LAB, Inc., 405 Alderson Street, Schofield, WI 54476, 800–627–8200, (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group, ExpressLab, Inc.).

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–24703 Filed 10–4–95; 8:45 am]

BILLING CODE 4160–20–U

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Substance Abuse Prevention Conference Review Committee, in October 1995.

The meeting of the Committee will include discussion of announcements and reports of administrative, legislative, and program developments. The Committee will also be performing review of applications for Federal assistance; therefore, a portion of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and roster of committee members may be obtained from: Ms. D. Herman, Committee Management Liaison, Office of Extramural Activities Review, SAMHSA, Rockwall II Building, Suite 630, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–4783.

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: Substance Abuse Prevention Conference Review Committee.

Meeting Date(s): October 23–27, 1995.

Place: Residence Inn—Bethesda, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: October 23, 1995, 8:30 a.m.–9:30 a.m.

Closed: October 23, 1995, 9:30 a.m. to October 27, 1995, at adjournment.

Contact: Ferdinand W. Hui, Ph.D., Rockwall II Building, Suite 630, Telephone: (301) 443–9912.

Dated: September 29, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–24741 Filed 10–4–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR–3917–N–23]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: December 4, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Report Liaison Officer, Oliver Walker, Management Services Division, Department of Housing & Urban Development, 451 7th Street SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Betty A. Belin at 202–708–0614x2807 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information to be collected; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

This Notice also lists the following information:

Title of proposal: Mortgagee's Application for Insurance Benefits (Multifamily Mortgage).

OMB control number: 2502–0419.

Description of the need for the information and proposed use: The mortgagee of a FHA insured mortgage is required to pay to HUD an annual mortgage insurance premium (MIP). When the mortgagor defaults by not performing its obligations under the contract of insurance, the mortgagee may elect to file a claim for insurance benefits. In the initial stage of the claim, the mortgagee must submit to the FHA Commissioner a form HUD–2747, Mortgagee's Application for Insurance Benefits. The mortgagee's obligation to pay future insurance premiums is terminated as of the date this form is received by the FHA Commissioner; however, the mortgagee is responsible for the payment of MIP premiums up to the receipt date acknowledged by the Commissioner. During the audit of the mortgagee's claim for payment of insurance benefits, the receipt date is compared to the mortgagee's MIP payment history. Delinquent premiums are deducted from insurance benefits payable to the mortgagee.

Agency form numbers: HUD–2747.

Member of affected public: Annually, it is estimated there will be 215 respondents. Each respondent will submit one form HUD–2747. The form can be prepared within 5 minutes. There will be 18 annual reporting hours.

Status of the proposed information collection: Reinstatement without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 28, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–24718 Filed 10–4–95; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3514–N–02]

Office of Administration; Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 29, 1995.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Proposal: Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (FR–3514).

Office: Community Planning and Development.

Description of the need for the information and its proposed use: The information collection is in compliance with the National Environmental Policy Act and the related environmental statutes. It will be used by recipients of HUD assistance who are required to assume HUD environmental responsibilities. HUD regulations require recipients to submit requests for release of funds and certification. Recipients must also maintain a public record of each project's compliance.

Form number: HUD–7015.15

Respondents: State, Local, or Tribal Government and Not-For-Profit Institutions

Reporting burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	2,100		1.70		1		3,670
Recordkeeping	2,100		1		.30		630

Total estimated burden hours: 4,300.

Status: Reinstatement with changes.

Contact: Roy Gonnella, HUD, (202) 708–1201; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: September 29, 1995.

[FR Doc. 95–24719 Filed 10–4–95; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR–2491–N–03]

Notice of Proposed Information Collection for Public Comment on Actions to Reduce Losses in FHA Programs

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: December 4, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Reports Liaison Officer, Department of Housing & Urban Development, 451–7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Andrew Zirneklis, Office of Lender Activities and Land Sales Registration on (202) 708–1515, extension 2055 (this is not a toll-free number) for copies of the proposed forms and other available documents contact Oliver Walker, Chief Directives, Reports and Forms Branch on 708–1694 extension 2144.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of proposal: Actions to Reduce Losses in FHA Programs (FR–2491).

OMB control number, if applicable: OMB# 2502–0392.

Description of the need for the information and proposed use: The information is used by HUD's Office of Lender Activities and Land Sales Registration to monitor and evaluate the performance of HUD-approved mortgagees as to their continued participation in the FHA mortgage insurance programs. The information is required to prevent losses to the FHA insurance funds, curb fraud in FHA programs and to maintain an effective Departmental compliance and administrative sanction process for lenders who violate the Department's requirements. Approximately 200 HUD approved morgagees annually are required to submit a report explaining the basis for having above-normal early serious defaults or claims in connection with FHA insured mortgages. This information is reviewed, and as appropriate, mortgagees are required to implement corrective action or be subject to administrative sanctions.

Agency form numbers, if applicable: Not applicable.

Members of affected public: Approximately 200 HUD approved morgagees.

Estimation of the total numbers of hours neededto prepare the information collection including number of respondents, frequency of response, and hours of response: The estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response is 40 hours (8,000 hours annually) per 1 respondent out of 200 respondents.

Status of the Proposed Information Collection

This a currently approved collection and an extension is being requested. The OMB approved number will expire on December 31, 1995.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 28, 1995.

Nicolas P. Retsinas,

A/S Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–24720 Filed 10–4–95; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–05–1990–02]

Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the Golden Sunlight Mine in Response to a State Court Decision (September 1, 1994)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the Golden Sunlight Mine (GSM) in response to a state court decision dated September 1, 1994, and notice of scoping meetings.

SUMMARY: Pursuant to section 101(2)(C) of the National Environmental Policy Act of 1969 and the Montana Environmental Policy Act, the Montana Department of Environmental Quality (DEQ, formerly the Department of State Lands) and the Bureau of Land Management (BLM), as lead agencies, will be directing the preparation of an EIS to be prepared by a third party contractor on the impacts of the 1990 Amendment 008 to the Operating Permit No. 00065 in response to the state court decision and the revised mining plan submitted by GSM in August 1995 as Amendment 009. The Golden Sunlight Mine is located approximately 30 miles east of Butte, Montana, immediately to the northeast of Whitehall.

DATES: Comments during the scoping process will be accepted until November 10, 1995. A public scoping meeting will be held at the school gym in Whitehall, Montana, from 5 to 9 pm.

ADDRESSES: Comments should be sent to Project Coordinator, Montana Department of Environmental Quality, P.O. Box 201601, Helena, MT 59620, Attn: Mr. Greg Hallsten/Jackie Merritt.

SUPPLEMENTARY INFORMATION: Golden Sunlight Mine, a wholly owned subsidiary of Placer Dome U.S. Inc., has operated a mine and mill complex at this site since 1982. The mine uses conventional open pit mining and vat milling processes to recover gold. Previous amendments had approved the production of 20 million tons of ore and associated tailing material, and 90 million tons of waste rock. Amendment 008 increased this to 50 million tons of ore and tailing material and 300 million tons of waste rock. Approximately 100,000 tons per day are mined. The mine life was extended by Amendment 008 to the year 2005.

GSM submitted an application for the expansion, Amendment 008 in 1988, and following the preparation of an Environmental Assessment, completed on May 30, 1990, and a 30-day public comment period, the Finding of No Significant Impact and Record of Decision were signed on June 30, 1990. There were issues the Environmental Assessment did not resolve and these were addressed by 31 stipulations to the permit. These stipulations included a variety of required monitoring in order to assure the proposed reclamation measures were effective in protecting environmental values. In August 1990 following the issuance of the permit, the National Wildlife Federation and several other environmental interest groups appealed the Record of Decision issued by the Butte District Office of the BLM to the Interior Board of Land Appeals. On March 30, 1992, these same groups filed a suit in Montana State Court alleging the Montana Department of State Lands had failed to enforce the Metal Mine Reclamation Act. On April 15, 1993, the Interior Board of Land Appeals ruled largely in favor of the Bureau regarding the Record of Decision, remanding the decision back to BLM for adjustments to the bond amount on test plats. GSM subsequently supplied additional bond to cover the test plots in question. On September 1, 1994, the State Court ruled against the Department of State Lands, stating the Montana Department of State Lands had violated both the Metal Mine Reclamation Act and the State Constitution.

The decision to prepare an EIS is in response to the Court's memorandum and order. Environmental concerns have centered on reclamation of the extensive waste rock dump complex, potential acid mine drainage problems, and potential impacts to ground and surface waters.

The EIS will also evaluate and review the environmental impacts of an extensive episode of ground movement in 1994 caused by the re-activation of a previously unknown landslide feature.

Dated: September 28, 1995.

James R. Owings,

District Manager.

[FR Doc. 95–24747 Filed 10–4–95; 8:45 am]

BILLING CODE 4310–DN–M

[UT–060–05–3800–006, UTU–72499]

Notice of Intent to Prepare a Third Party Environmental Impact Statement for SUMMO USA Corporation Lisbon Valley Open Pit Copper Mine in San Juan County, Utah

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of intent to prepare a third party Environmental Impact Statement for the SUMMO USA Corporation's Lisbon Valley Open Pit Copper Mine in San Juan County, Utah, and notice of scoping meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) Moab Field Office, will be directing the preparation of an Environmental Impact Statement (EIS) to be prepared by a third party contractor on the impacts of SUMMO USA Corporation's proposed Lisbon Valley Open Pit Copper Mine. The proposed project would be located on approximately 1000 acres of federal, state, and private lands located in San Juan County, Utah.

SUPPLEMENTARY INFORMATION: SUMMO USA Corporation of Denver, Colorado proposes to develop an open pit copper mining and heap leaching operation on approximately 1000 acres of private fee lands, state leases and unpatented mining claims in south Lisbon Valley, located approximately 19 miles southeast of LaSal, Utah, in San Juan County, Utah.

The copper ore will be mined by conventional open pit mining methods utilizing drilling, blasting and ripping of the ore and associated overburden. The overburden will be removed and stockpiled and the ore will be loaded with front end loaders onto haul trucks. The ore will be trucked to a centralized pad area, utilizing 15,000 feet of haul roads, where it will be crushed and stacked. The copper will then be recovered by a heap leaching method, utilizing low concentrations of sulfuric acid. The leached copper solution will be further refined by standard solvent extraction and electrowinning processes.

The facilities are designed to mine an average of 16,500 tons of ore per day, to produce 17,000 tons of 99.99% pure copper cathodes per year. SUMMO will employ up to 105 people at one time over the life of the project. The construction work force will be approximately 80 people. Mining will occur 24 hours per day, 7 days a week throughout the project mine life. The project is currently projected to have a 10 year mining life. Processing will continue after mining ceases for an additional year. To the extent possible, reclamation will occur simultaneously with mining. Final closure and reclamation activities will take approximately 5 years.

Prior to initiation of the EIS, public scoping meetings will be held to identify and gather information

pertinent to the analysis of environmental and socioeconomic impacts associated with this project. The scoping process will involve: (1) Identification of issues to be addressed; (2) identification of viable alternatives, and; (3) notification to interested groups, individuals and agencies so that additional information concerning issues may be submitted.

Two public scoping meetings will be held. The first meeting will be held on November 1, 1995, at 7:00 PM in Moab, Utah in the conference room of the BLM office, located at 82 East Dogwood Avenue. The second meeting will be held on November 2, 1995, at 7:00 PM in Monticello, Utah in the BLM office conference room, located at 435 North Main Street.

The scoping process will consist of a news release announcing the start of the EIS process, an open invitation to participate in the scoping process, and a scoping document which further clarifies the proposed action, alternatives, and identified issues. This document will be distributed to selected parties and available upon request.

Written comments will be accepted until November 30, 1995. Concerns or comments should be sent to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532.

FOR FURTHER INFORMATION CONTACT: Lynn Jackson, Project Leader, Moab District Office, P.O. Box 970, Moab, Utah 84532, (801) 259–6111.

Dated: September 28, 1995.

William Stringer,

Acting District Manager.

[FR Doc. 95–24744 Filed 10–4–95; 8:45 am]

BILLING CODE 4310–DQ–M

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting, notice of meeting.

SUMMARY: This notice announces the second meeting of the Arizona Resource Advisory Council. The meeting will be held on November 8–9, 1995. The meeting consists of a 1-day business session and a field tour. The business meeting on November 8, 1995, will be held in the New Mexico Room at the Bureau of Land Management's National Training Center, 9828 N. 31st Avenue, Phoenix, Arizona 85051. The agenda items to be covered at the meeting will include review of previous meeting minutes, old business, BLM program overview, vegetative slide presentation, standard and guidelines work group report, working group video, ''If a Mountain Could Speak'', report on Arizona Preservation Initiative, and a public comment period. On November 9, 1995, a field tour for the Council will take place in the BLM Phoenix District. The tour will leave the Phoenix District Office, located at 2015 West Deer Valley Road, Phoenix, Arizona, at 8 a.m., and will examine rangeland management issues such as riparian and vegetation management, range improvements, wild burro management, and grazing systems. The public is invited to attend but will need to provide their own transportation and meals for the tour.

FOR FURTHER INFORMATION CONTACT: Clinton Oke, Bureau of Land Management, Arizona State Office, P.O. Box 16563, 3707 N. 7th Street, Phoenix, Arizona 85014, (602) 650–0512.

Herman Kast,

Deputy State Director, Resource, Planning, Use, and Protection Division.

[FR Doc. 95–24735 Filed 10–4–95; 8:45 am]

BILLING CODE 4310–32–P

[AZ-050–05–1610–00; 1617]

Arizona: Availability of Yuma District Administrative Determination

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Yuma District administrative determination, Yuma District.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) has prepared an administrative determination to incorporate the appropriate decisions from the Phoenix District planning documents into the Yuma District Resource Management Plan in order to create a single, comprehensive planning document for the Yuma District.

SUPPLEMENTARY INFORMATION: On December 15, 1991, the Phoenix, Safford, and Yuma Districts realigned their boundaries in order to improve the management of the public lands within Arizona. Yuma District received approximately 1.2 million acres from the Phoenix District.

These newly acquired lands in the Yuma District were covered by portions of the Kingman Resource Management Plan (3/95), the Lower Gila North Management Framework Plan (3/83) and the Lower Gila South Resource Management Plan, as amended (6/88). The lands within the original boundaries of the Yuma District were covered by the Yuma District Resource Management Plan (2/87).

FOR FURTHER INFORMATION CONTACT: For a copy of the document or more information, contact Renewable Resources Advisor Brenda Smith, Bureau of Land Management, 3150 Winsor Avenue, Yuma, Arizona 85365, telephone (520) 726–6300.

This notice is published under authority found in 43 CFR 1610.5–4.

Dated: September 27, 1995.

Judith I. Reed,

District Manager.

[FR Doc. 95–24745 Filed 10–4–95; 8:45 am]

BILLING CODE 4310–32–P

[CO–956–95–1420–00]

Colorado: Filing of Plats of Survey

September 29, 1995.

The plats of survey of the following described land are officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m. on September 29, 1995.

The plat representing the dependent resurvey of portions of the subdivisional lines and Tract 51 in sec. 8, and the subdivision of certain sections in Township 7 South, Range 100 West, Sixth Principal Meridian, Group 1013, Colorado, was accepted August 11, 1995.

The plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, in Township 5 North, Range 90 West, Sixth Principal Meridian, Group 1058, Colorado, was accepted August 18, 1995.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the metes-and-bounds survey of Tracts 37, 38 and 39, Township 3 North, Range 79 West, Sixth Principal Meridian, Group 1078, Colorado, was accepted May 12, 1995.

This survey was executed to meet certain administrative needs of the U.S. Forest Service, Rocky Mountain Region.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of section 14U, Township 34 North, Range 3 West (South of the Ute Line), New Mexico Principal Meridian, Group 764, Colorado, was accepted August 4, 1995.

The plat representing the dependent resurvey of portions of the west and north boundaries, subdivisional lines, and subdivision of sections, and the survey of the subdivision of certain sections in Township 33 North, Range 7

West, New Mexico Principal Meridian, Group 980, Colorado, was accepted August 16, 1995.

The 7 plats representing the dependent surveys, and metes and bounds surveys for Southern Ute Tribe Homesites, in sections 6, 9, 16, 21, 22, 27, and 33 in Township 33 North, Range 7 West, New Mexico Principal Meridian, Group 1036, Colorado, were accepted September 14, 1995.

The 6 plats representing the metes and bounds surveys for Southern Ute Tribe Homesites, in sections 10U, 12U, 13U, 23, 26, and 27, in Township 34 North, Range 7 West (South of the Ute Line), New Mexico Principal Meridian, Group 980, Colorado, were accepted September 14, 1995.

The plat representing the survey, dependent resurvey and metes and bounds surveys for Southern Ute Tribe Homesites, in section 12U, Township 34 North, Range 9 West, New Mexico Principal Meridian, Group 1036, Colorado, was accepted September 14, 1995.

The three plats representing the surveys and metes and bounds surveys for Southern Ute Tribe Homesites, in section 3, 10 and 13, Township 32 North, Range 7 West, New Mexico Principal Meridian, Group 970, Colorado, were accepted September 14, 1995.

The plat, in two sheets, representing the surveys, resurveys and metes and bounds surveys for Southern Ute Tribe Homesites, in section 20, Township 34 North, Range 8 West (South of the Ute Line), New Mexico Principal Meridian, Group 849, Colorado, was accepted September 14, 1995.

These surveys were executed to meet certain administrative needs of the Southern Ute Indian Reservation.

The supplemental plat removing lot five and showing corrected lottings within section 33, Township 34½ North, Range 9 West, of the New Mexico Principal Meridian, Colorado was approved August 22, 1995.

This plat was created to meet certain administrative needs of this Bureau.

Darryl A. Wilson,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 95–24742 Filed 10–4–95; 8:45 am]

BILLING CODE 4310–JB–P

Fish and Wildlife Service

Garrison Diversion Unit Federal Advisory Council Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Garrison Diversion Unit Federal Advisory Council established under the authority of the Garrison Diversion Unit Reformulation Act of 1986 (Public Law 99–0294, May 12, 1986). The meeting is open to the public. Interested persons may be offer statements to the council or may file written statements for consideration.

DATES: The Garrison Diversion Unit Federal Advisory Council will meet from 1:00 p.m. to 4:30 p.m. on Thursday, October 12, and from 8:30 a.m. to 12:30 p.m. on Friday, October 13, 1995.

ADDRESSES: The meeting will be held at the North Dakota Game and Fish Department, 100 N. Bismarck Expressway, Bismarck, North Dakota.

FOR FURTHER INFORMATION CONTACT: Dr. Grady Towns, Ecological Services, at (303) 236–7400, extension 230.

SUPPLEMENTARY INFORMATION: The Garrison Diversion Unit Federal Advisory Council will consider and discuss subjects such as the Kraft Slough status and acquisition, the Garrison Diversion Unit project update and wildlife budget, Refuge compatibility, Mitigation planning, Wetland Trust, Oakes Test Area, mitigation and enhancement, and Lonetree management and land acquisition.

Dated: September 29, 1995.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 95–24817 Filed 10–4–95; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Approval

The following applicants have applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Carl McCullough, The Lory and Hanging Parrot Breeding Consortium, Spring Valley, CA. The applicant wishes to establish a cooperative breeding program for the Papuan or Stella lorikeet (*Charmosyna papua papua*), the Striated lorikeet (*Charmosyna multistriata*), the Fairy lorikeet (*Charmosyna pulchella pulchella*), the Wiskered lorikeet (*Oreopsittacus arfaki arfaki*), the Duvenbode lory (*Chalcopsitta duivenbodei*) and the Philippine Hanging parrot (*Loriculus philippensis philippensis*). Mr. McCullough wishes to be an active participant in this program with three other private individuals. The Avicultural Society of America has assumed the responsibilty for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 29, 1995.

Dr. Susan Lieberman,

Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 95–24748 Filed 10–4–95; 8:45 am]

BILLING CODE 4310–55–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32738]

Georgia Southwestern Division, South Carolina Central Railroad Co., Inc.—Lease and Operation Exemption—Norfolk Southern Railway Company and Central of Georgia Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 the lease and operation by Georgia Southwestern Division, South Carolina Central Railroad Co., Inc., of a rail line owned by Central of Georgia Railroad Company and operated by Norfolk Southern Railway Company, between Ochillee, GA (milepost 12.0), and a point north of BV&E Junction, GA (milepost 61.5),

subject to standard labor protective conditions.

DATES: This exemption will be effective on November 4, 1995. Petitions to stay must be filed by October 20, 1995, and petitions to reopen must be filed by October 30, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32738 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423; and (2) Petitioner's representative, Robert J. Cooney, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510–2191.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5271.]

Decided: September 26, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–24779 Filed 10–4–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32771]

Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp.—Trackage Rights Exemption—The Wichita Union Terminal Railway Company Lines in Wichita, KS

The Wichita Union Terminal Railway Company (Wichita Union) has agreed to grant Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp. (collectively, SP) overhead trackage rights over Wichita Union's lines between The Atchison, Topeka and Santa Fe Railway Company's (Santa Fe) milepost 211.7 and milepost 213.2 in Wichita, KS.

These trackage rights have been granted pursuant to a settlement agreement dated April 13, 1995, which was entered into by SP, on the one side, and by Burlington Northern Railroad Company (BN) and Santa Fe, on the other side, in connection with the consolidation proceeding in *Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32549 (ICC served Aug. 23, 1995) *(BN/Santa Fe).*

SP's trackage rights over Wichita Union are necessary to enable SP to exercise the trackage rights which Santa Fe has granted to SP over Santa Fe's lines between Hutchinson and Winfield Junction, KS. *See Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp.—Trackage Rights Exemption—The Atchison, Topeka and Santa Fe Railway Company Lines Between Kansas City, KS, and Fort Worth, TX, and Between Hutchinson, KS, and Winfield Junction, KS*, Finance Docket No. 32722 (ICC served Sept. 1, 1995). The settlement agreement further provides that SP's trackage rights are subject to access rights. Under the terms of the settlement agreement, SP will receive access to: industries served directly or by reciprocal switching by BN or Santa Fe at Wichita; industries at Hutchinson, through the present reciprocal switching arrangements; the Central Kansas Railway at Wichita; and the South Kansas and Oklahoma Railroad at Winfield, KS.

The settlement agreement provides that the various rights granted therein will be effective upon consummation of common control of BN and Santa Fe, which occurred on September 22, 1995. *See BN/Santa Fe*, slip. op. at 117.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Paul A. Cunningham, Harkins Cunningham, 1300 19th Street, N.W., Suite 600, Washington, D.C. 20036.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: September 26, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–24780 Filed 10–4–95; 8:45 am]

BILLING CODE 7035–01–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure, and Rules of Evidence

AGENCY: Judicial Conference of the United States Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure, and Rules of Evidence.

ACTION: Notice of Open Hearings.

SUMMARY: The Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure, and Rules of Evidence have proposed amendments to the following rules:

Appellate Rules: 26.1, 29, 35, & 41;
Bankruptcy Rules: 1019, 2002, 2007.1, 3014, 3017, 3018, 3021, 8001, 8002, 9011, 9035, & new rules 1020, 3017.1, 8020, & 9015;
Civil Rules: 9, 26, 47, & 48;
Criminal Rules: 24; and
Evidence Rules: 103, 407, 801, 803, 804, 806, & new rule 807. Also, the committee seeks comment on its tentative decision not to amend 24 rules.

Public hearings will be held on the amendments to: Appellate Rules in Denver, Colorado on January 22, 1996; Bankruptcy Rules in Washington, DC on February 9, 1996; Civil and Criminal Rules (Joint Hearings) in Oakland California on December 15, 1995, and in New Orleans, Louisiana on February 9, 1996; Civil Rules in Atlanta, Georgia on January 26, 1996; and Evidence Rules in New York, New York on January 18, 1996.

The Judicial Conference Committee on Rules of Practice and Procedure submits these rules for public comment. All comments and suggestions with respect to them must be placed in the hands of the Secretary as soon as convenient and, in any event, no later than March 1, 1996.

Anyone interested in testifying should write to Mr. Peter G. McCabe, Secretary, Committee on Rules on Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, at least 30 days before the hearing.

FOR FURTHER INFORMATION CONTACT:

John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC, telephone (202) 273–1820.

Dated: September 29, 1995.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 95–24715 Filed 10–4–95; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice is hereby given that on September 25, 1995, a proposed consent decree in *United States* v. *Edward Azrael, et al.,* Civ. A. No. WN–89–2898, was lodged with the United States District Court for the District of Maryland. The complaint in this action seeks recovery of costs and injunctive relief under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99–499, 42 U.S.C. 9606, 9607(a). This action involves the Kane & Lombard Superfund Site located in Baltimore, Maryland.

Under the proposed Consent Decree, AT&T Technologies, Inc.; Anchor Post, Inc.; Armco, Inc.; Baltimore Gas and Electric Company; Beatrice Companies, Inc.; Browning Ferris, Inc.; Canton Company; Canton Railroad Company; Container Corporation of America; General Motors Corporation; Crown Cork and Seal, Inc.; Exxon Corp.; H.M. Holdings, Inc.; International Paper Co.; O'Brien Corporation; the Mayor and City Council of Baltimore; Pori International; Roadway Express Co.; Sweetheart Cup Co.; and Allied Signal have agreed to pay to the United States $5,927,038.90 for reimbursement of past response costs. A group of Defendants has also agreed to undertake the operation and maintenance of the containment/pump & treat system installed at the Site. In return the above listed parties will receive a covenant not to sue and contribution protection for the matters addressed in the Consent Decree. The Decree reserves the right of the United States to recover future response costs and seek further injunctive relief against the settling parties for conditions at the Site that are not known by the United States at the time of entry of this decree.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *Edward Azrael, et al.,* DOJ Reference No. 90–11–2–229.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of Maryland, 101 W. Lombard Street, Eighth Floor, Baltimore, Md. 21201; Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pa.; and at the consent Decree Library, 1120 ''G'' Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library at the address listed above. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of $140.25 (25 cents per page reproduction costs including appendices), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–24752 Filed 10–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Neville Chemical Company,* Civil Action No. 94–288, was lodged on September 19, 1995, with the United States District Court for the Western District of Pennsylvania. The proposed consent decree would settle an action brought under Section 3008(a) and (g) of the Resource Conservation and Recovery Act of 1976, as amended (''RCRA''), 42 U.S.C. 6928(a) and (g), against the defendant, Neville Chemical Company (''Neville''), for alleged violations of RCRA regulations at Neville's resin and fuel oil distillate manufacturing facility located on Neville Island in the Ohio River, Pittsburgh, Pennsylvania. The claims that would be resolved under the proposed consent decree allege Neville's violations of certain waste management, paperwork and filing requirements for generators of hazardous waste and/or hazardous waste treatment, storage or disposal (TSD) facilities.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Neville Chemical Company,* DOJ Ref. #90–7–1–689.

The proposed consent decree may be examined at the office of the United States Attorney, 14th Floor, Gulf Tower, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–24753 Filed 10–4–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. Lykes Bros. Steamship Co., Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Lykes Bros. Steamship Co., Inc.,* Civil No. 95–CV01839 as to Lykes Bros. Steamship Co., Inc.

The Complaint alleges that the defendant and Universal Shippers Association entered into a contract containing an automatic rate differential clause, which required defendant to charge competing shippers of wine and spirits from Europe to the United States rates for ocean transportation services that were at least 5% higher than

Universal's for any lesser volume of cargo. This clause required maintenance of a 5% differential in favor of Universal at all times, thereby placing shippers who compete with Universal at a competitive disadvantage.

The proposed Final Judgment enjoins the defendant from maintaining, agreeing to, or enforcing an automatic rate differential clause in any of its individual contracts, and also requires the defendant to establish an antitrust compliance program.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to Roger W. Fones, Chief, Transportation, Energy and Agriculture Section, Room 9104, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., Washington, DC 20001 (telephone: 202/307–6351).

Rebecca P. Dick,

Deputy Director, Office of Operations, Antitrust Division.

[Civil Action No.: 1:CV01839] Judge Gladys Kessler

United States of America, Plaintiff, v. Lykes Bros. Steamship Co., Inc., Defendant.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties thereto, and venue of this action is proper in the District of Columbia;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court;

3. In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

This ____ day of September, 1995.

For the Plaintiff, United States of America:

Roger W. Fones,

Chief, Transportation, Energy and Agriculture Section.

Donna N. Kooperstein,

Assistant Chief, Transportation, Energy and Agriculture Section.

Michele B. Felasco,

Attorney, Transportation, Energy and Agriculture Section.

For the Defendant, Lykes Bros. Steamship Co., Inc.:

Andrew K. Macfarlane, Esquire,

Macfarlane Ausley Ferguson & McMullen.

Final Judgment

Plaintiff, United States of America, filed its Complaint on September 26, 1995 United States of America and Lykes Bros. Steamship Co., Inc., by their respective attorneys, have consented to the entry of this final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against nor an admission by any party with respect to any issue of fact or law. Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

Ordered, Adjudged, and Decreed, as follows:

I.

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act, 15 U.S.C. 1.

II.

Definitions

As used herein, the term:

(A) ''automatic rate differential clause'' means any provision in a contract that requires the defendant, as an ocean common carrier, to maintain a differential in rates, whether expressed as a percentage or as a specific amount, between rates charged by defendant to the shipper under the contract and rates charged by defendant to any other similarly situated shippers of the same commodities for lesser volumes.

(B) ''contract'' means any contract for the provision of ocean liner transportation services, including a service contract. ''Contract'' does not include any contract for charter services or for ocean common carriage provided at a tariff rate filed pursuant to 46 U.S.C. App. § 1707.

(C) ''conference'' means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff in accordance with 46 U.S.C. App. § 1701, et seq.

(D) ''conference contract'' means a contract between a conference and a shipper.

(E) ''defendant'' means Lykes Brothers Steamship Co., Inc., each of its predecessors, successors, divisions, and subsidiaries, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all present and former employees, directors, officers, agents, consultants or other persons acting for or on behalf of any of them.

(F) ''individual contract'' means a contract between a shipper and defendant in its capacity as an individual ocean common carrier and not in its capacity as a conference member.

(G) ''service contract'' means any contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level.

(H) ''shipper'' means the owner of cargo transported or the person for whose account the ocean transportation of cargo is provided or the person to whom delivery of cargo is made; ''shipper'' also means any group of shippers, including a shippers' association.

(I) ''shippers' association'' means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volumes rates or service contracts.

III.

Applicability

(A) This Final Judgment applies to the defendant and to each of its subsidiaries, successors, assigns, officers, directors, employees, and agents.

(B) Nothing contained herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV.

Prohibited Conduct

Defendant is restrained and enjoined from maintaining, adopting, agreeing to,

abiding by, or enforcing an automatic rate differential clause in any individual contract.

V.

Nullification and Limiting Conditions

(A) Nullification

(1) Any automatic rate differential clause in any of defendant's individual contracts shall be null and void by virtue of this Final Judgment. Promptly upon entry of this Final Judgment, defendant shall notify in writing each shipper with whom defendant has an individual contract containing an automatic rate differential clause that this Final Judgment prohibits such clause.

(B) Limiting Conditions

(1) Nothing in this Final Judgment shall affect any conference contracts to which defendant is a party pursuant to defendant's membership in a conference agreement.

(2) Nothing in this Final Judgment shall limit defendant's ability to participate in any conference contract that contains an automatic rate differential clause.

(3) Nothing in this Final Judgment shall prevent defendant from entering a contract to maintain, for any single voyage, a differential in rates between the rates charged by defendant to the shipper under the contract and the rates charged by defendant to another shipper that has contracted for a single shipment on the same voyage.

VI.

Compliance Measures

Defendant is ordered:

(A) To send, promptly upon entry of this Final Judgment, a copy of this Final Judgment to each shipper whose individual contract contains an automatic rate differential clause;

(B) To send a copy of this Final Judgment to each shipper that requests an automatic rate differential clause;

(C) To maintain an antitrust compliance program which shall include the following:

(1) Designating within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of defendant to ensure that it complies with this Final Judgment.

(2) The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

(a) Distributing copies of this Final Judgment in accordance with Sections VI(A) and VI(B) above; and

(b) Distributing, upon entry of this Final Judgment, a copy of this Final Judgment to all officers and employees with responsibility for negotiating contracts with shippers, overseeing compliance with such contracts, or shipper relations.

(c) Briefing annually defendant's Board of Directors, Executive Committee, officers, and non-clerical employees on this Final Judgment and the antitrust laws.

VII.

Certification

(A) Within 75 days after the entry of this Final Judgment, the defendant shall certify to the plaintiff that it has complied with Sections V and VI(A) above, designated an Antitrust Compliance Officer, and distributed the Final Judgment in accordance with Sections VI(B) and VI(C) above.

(B) For each year of the term of this Final Judgment, the defendant shall file with the plaintiff, on or before the anniversary date of entry of this Final Judgment, a statement as to the fact and manner of its compliance with the provisions of Sections V and VI above.

VIII.

Plaintiff Access

(A) To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the defendant's office hours to inspect and copy all documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees or agents of the defendant, who may have counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in Section VIII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then 10 days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

IX.

Further Elements of the Final Judgment

(A) This Final Judgment shall expire five years from the date of entry, provided that, before the expiration of this Final Judgment, plaintiff, after consultation with defendant, and in plaintiff's sole discretion, may extend the Final Judgment for an additional five years.

(B) Jurisdiction is retained by this Court for the purpose of enabling the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Case Number: 1:95CV01839.
Judge: Gladys Kessler.
Deck Type: Antitrust.
Date Stamp: 09/26/95.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act,

15 U.S.C. § 16(b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry against and with the consent of defendant Lykes Bros. Steamship Co., Inc. (''Lykes'') in this civil proceeding.

I

Nature and Purpose of the Proceeding

On September 26, 1995, the United States filed a civil antitrust Complaint alleging that Lykes Bros. Steamship Co., Inc. (''Lykes'') entered into an agreement with a shippers' association that unreasonably restrains competition by restraining discounting of rates for ocean transportation services in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

On the same date, the United States and Lykes filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to undo the challenged agreement and prevent any recurrence of such agreements in the future.

Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction over the matter for any further proceedings that may be required to interpret, enforce or modify the Judgment or to punish violations of any of its provisions.

II.

Practices Giving Rise to the Alleged Violation

Defendant Lykes is a Louisiana corporation with its principal place of business in Tampa, Florida. Lykes is an ocean common carrier that provides ocean transportation services for cargo worldwide, including services in the North Atlantic trade between the United States and Northern Europe. In 1994, Lykes' vessel operating revenues totaled approximately $625 million.

Prices in the ocean shipping industry are not set in a vigorously competitive market. The ocean shipping industry is comprised of both conference and independent ocean common carriers. A conference is a legal cartel of ocean common carriers; its members receive immunity from the antitrust laws (46 U.S.C. App.§ 1701, *et seq.*, ''1984 Shipping Act'') to agree on prices and engage in other otherwise illegal concerted activity. There are over 15 carriers that serve the North Atlantic trade between the United States and Europe, but the majority of these are members of the Trans-Atlantic Conference Agreement (''TACA''). TACA is a conference that has received antitrust immunity to jointly fix prices and limit capacity in the North Atlantic trade. Their prices are set forth in tariffs filed with the Federal Maritime Commission (''FMC'') and are available to all customers (who are called ''shippers''). Defendant Lykes is not a member of TACA. It operates as an independent carrier in the North Atlantic, offering transportation services to all shippers at tariff prices that it sets independently. In trades with a significant conference, such as the North Atlantic trade, independents as well as the conference possess some degree of market power over freight rates because there are relatively few separate sellers.

Under the 1984 Shipping Act, independent carriers or conferences may enter into service contracts with shippers or shippers' associations. A shippers' association is a group of shippers that consolidates or distributes freight for its members on a nonprofit basis in order to secure volume discounts. In a service contract, a shipper or shippers' association commits to provide a certain minimum quantity of cargo over a fixed period, and the ocean carrier or conference commits to a certain price schedule based on that volume. Service contract prices are typically lower than the tariff prices.[1]

Universal Shippers Association (''Universal'') is a shippers' association composed of member shippers' associations and large independent distillers that ship their own products. Universal accounts for about half of the wine and spirits carried across the North Atlantic. Universal entered into a service contract with Lykes on or about October 26, 1993 (effective through December 31, 1995), for the ocean transportation of wine and spirits from Northern Europe to the United States. The Lykes/Universal contract contained the following ''automatic rate differential clause'':

> Carrier guarantees that rates and charges in this Contract shall at all times be at least 5% lower than any other tariff, Time Volume or other service contract rates for similar commodities at a lesser volume and essentially similar transportation service. As necessary, Carrier shall reduce rates/charges in this Contract as necessary to honor this guarantee, promptly informing the Association and the FMC.

This clause requires Lykes to charge competing shippers or shippers' associations that purchase lesser volumes than Universal a rate that is at least 5% higher than Universal's.

Other shippers and shippers' associations compete with Universal and its members for importing wines and spirits into the United States. Universal's competitors seek to minimize their costs by, *inter alia*, obtaining the lowest possible rates for the ocean transportation of wine and spirits. But the automatic rate differential clause limits Lykes' incentive to offer to Universal's competitors transportation rates as favorable as Lykes could otherwise offer. To comply with the clause, Lykes must either offer these shippers prices that are at least 5% higher than the prices in Universal's service contract, or it must lower Universal's price for *all* of Universal's service contract shipments in order to maintain the 5% differential. The latter is not an attractive alternative for Lykes, given Universal's volume. And in either case, Universal's competitors pay prices 5% higher than Universal—regardless of Lykes' cost of providing them with transportation—which adversely affects their ability to compete with Universal.

Where there are few separate sellers, as is the case here, an automatic rate differential clause in effect places a tax on the buyer's competitors. There is a danger that this tax will protect the buyer from competition from firms whose costs may otherwise be lower than its own, thus erecting barriers to competition. It is the raising of these barriers to competition with Universal, which already has a substantial market presence, that constitutes the unreasonable restraint of trade in this case.

III.

Explanation of the Proposed Final Judgment

The Plaintiff and Lykes have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission of any party concerning any issue of fact or law.

Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act 15 U.S.C. § 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section IX(C) of the proposed Final Judgment sets forth such a finding.

[1] Independent carriers and conferences may also enter into service contracts with non-vessel operating common carriers (''NVOCCs''). An NVOCC offers transportation services to shippers but does not operate the vessels. NVOCCs typically consolidate the freight of small shippers and then arrange for carriage of the consolidated freight.

The proposed Final Judgment is designed to eliminate the automatic differential clause from defendant's individual contracts for the provision of ocean liner transportation services with shippers or shippers' associations. Under Section IV of the proposed Final Judgment, Lykes is restrained and enjoined from maintaining, adopting, agreeing to, abiding by, or enforcing an automatic rate differential clause in any contract when acting in its capacity as an independent carrier. Section IX of the proposed Final Judgment provides for an initial term of five years, which the United States in its sole discretion may extend up to five additional years. Section V(A) nullifies any automatic rate differential clauses currently in effect in any of Lykes' contracts as an independent ocean carrier.

The proposed Final Judgment does not affect any contracts of any conference in which Lykes is member, and it does not limit Lykes' ability to participate in any conference contracts that contain such a clause. Section V(B)(1–2).

Section VI of the proposed Final Judgment requires Lykes to send a copy of the Final Judgment to each shipper whose contract with Lykes, as an independent carrier, contains an automatic rate differential clause, and to send a copy of the Final Judgment to any other shipper or shippers' association that requests an automatic rate differential clause. Section VI also obligates Lykes to maintain an antitrust compliance program that meets the obligations specified in Section VI(C). The Final Judgment also contains provisions, in Section VII, obligating Lykes to certify its compliance with specified obligations of Sections V and VI of the Final Judgment. In addition, Section VIII of the Final Judgment sets forth a series of measures by which the plaintiff may have access to information needed to determine or secure Lykes' compliance with the Final Judgment.

The relief in the proposed Final Judgment removes the contractual clause that requires Lykes to place in essence a 5% ''tax'' on the shipping costs of Universal's competitors. It restores to Universal's competitors the ability to compete for the lowest shipping prices.

IV.

Alternative to the Proposed Final Judgment

The alternative to the proposed Final Judgment would be a full trial on the merits of the case. In the view of the Department of Justice, such a trial would involve substantial costs to both the United States and Lykes and is not warranted because the proposed Final Judgment provides relief that will fully remedy the violations of the Sherman Act alleged in the United States' Complaint.

V.

Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damage suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist in the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent action that may be brought against the defendant in this matter.

VI.

Procedures Available for Modification of the Proposed Final Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Judgment should be modified may submit written comments to Roger W. Fones, Chief; Transportation, Energy, and Agriculture Section; Department of Justice; Antitrust Division; Judiciary Center Building, Room 9104; 55 Fourth Street, N.W.; Washington, D.C. 20001, within the 60-day period provided by the Act. Comments received, and the Government's responses to them, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to Paragraph 2 of the Stipulation, to withdraw its consent to the proposed Final Judgment at any time before its entry if the Department should determine that some modification of the Judgment is warranted in the public interests. The proposed Judgment itself provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Judgment.

VII.

Determinative Documents

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered in formulating the proposed Judgment, consequently, none are filed herewith.

Dated: September 26, 1995.

Respectfully submitted,

Michele B. Felasco,

Attorney, Antitrust Division, Department of Justice.

[FR Doc. 95–24750 Filed 10–4–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,639]

Gould Shawmut a/k/a Gould Electronics, Inc. Marble Falls, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 26, 1994, applicable to workers of the subject firm. The certification was amended on August 4, 1995 to reflect a corporate name change. The amended notice was published in the Federal Register on August 16, 1995 (60 FR 30618).

At the request of State Agency, the Department is expanding coverage of the certification to include all workers at the Marble Falls location. The workers produce electronic components. New findings show that worker layoffs were not limited to the fuseholder production line.

The intent of the Department's certification is to include all workers of Gould Shawmut in Marble Falls, Texas who were affected by increased imports.

The amended notice applicable to TA–W–29,639 is hereby issued as follows:

All workers of Gould Shawmut, a/k/a Gould Electronics, Inc., Marble Falls, Texas who became totally or partially separated from employment on or after October 1, 1993, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of September 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–24769 Filed 10–4–95; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of September, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,375; Grumman Olson, a Division of Grumman Allied Industries, a Subsidiary of Northrop Grumman Corp., Montgomery, PA

TA–W–31,306; United Technology Motor Systems, Inc., Brownsville, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,332; Jakel, Inc., Ramer, TN

TA–W–31,350; Chains, Inc., Bonners Ferry, ID

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–31,378; Jusher Manufacturing Co., Tishomingo, OK: August 14, 1994.

TA–W–31,412; DNT, Inc., Byrdstown, TN: August 28, 1994.

TA–W–31,370; Jonbil, Inc., Danville Plant, Danville, VA: September 20, 1995.

TA–W–31,250; Ackerman Shirt Co., Inc., Ackerman, MS: July 12, 1994.

TA–W–31,354; Emerson Electric Co., Specialty Motor Div., Rogers, AR: August 4, 1994.

TA–W–31,356; Jeld-Wen of Bend/Bend Millwork, Bend, OR: August 9, 1994.

TA–W–31,432; B.W. Harris Manufacturing Co., West St. Paul, MN: August 25, 1994.

TA–W–31,424; A.I. of Tennessee, Inc., Powell, TN: September 7, 1994.

TA–W–31,351; Consolidated Natural Gas Transmission, Clarksburg, WV: August 9, 1994.

TA–W–31,407; D & H Companies, Odessa, TX: August 20, 1994.

TA–W–31,371; Gaylord Container, Weslaco, TX: August 17, 1994.

TA–W–31,309; Albert Given Manufacturing Co., a Div. of Jaymar-Ruby, Inc., (aka Trans-Apparel Group), East Chicago, IN: May 11, 1994.

TA–W–31,305 & A; Perdikakis Williams & Associates, Inc., Dayton, OH: & Lockwood, Jones & Beals, Inc., Dayton, OH: July 25, 1994.

TA–W–31,431; Max Kakn Curtain Corp., Evergreen, AL: August 29, 1994.

TA–W–31,435; Consolidated Oil & Gas, Inc., Denver, CO: August 31, 1994.

TA–W–31,425; Walker Equipment Corp., Subsidiary of Plantronics, Inc., Ringgold, GA: August 29, 1994.

TA–W–31,357; The John Chopot Lumber Co., Inc., Colville, WA: August 4, 1994.

TA–W–31,258; Jessico Corp., Monterey, VA: July 13, 1994.

TA–W–31,429; Pine Shirt Co., Pottsville, PA: September 5, 1994.

TA–W–31,364; United Technologies Motor Systems, Columbus, MS: August 12, 1994.

TA–W–31,298; Karabelas Collection Limited, New York, NY: July 19, 1994.

TA–W–31,360; The Peoples Gas Light & Coke Co., SNG Plant, Ellwood, IL: August 10, 1994.

TA–W–31,328; Genesis Knitting, Inc., aka Fantasia Fashions & Amboy Knit, Perth Amboy, NJ: August 3, 1994.

TA–W–31,418; Lincoln Brass Works, Inc., Waynesboro Div., Waynesboro, TN: August 10, 1994.

TA–W–31,394; Bike Athletic Co., Knoxville, TN: August 23, 1994.

TA–W–31,433; Smith Valve Corp., New Known As SV Corp., Whitinsville, MS: September 7, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of September, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00563; Thompson Steel Pipe Co., Thompson Tanks Div., Princeton, KY.

NAFTA–TAA–00536; United Technologies Motor Systems, Inc., Brownsville, TX

NAFTA–TAA–00560; Elco Corp., Huntingdon, PA

NAFTA–TAA–00564; Grumman Allied Industries, Grumman Olson Div., A

Subsidiary of Northrop Grumman Corp., Montgomery, PA

NAFTA–TAA–00572; Owens-Illinois, Inc., Owens-Brockway Glass Containers, Auburn, NY

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–00573; Sam's Club, McAllen, TX

NAFTA–TAA–00585; Kaiser Porcelain US, Inc., Niagara Falls, NY

NAFTA–TAA–00558; Hampton Lumber Sales Co., Special Products Department, Portland, OR

The investigation revealed that the workers of the subject firm do not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–00566; The Leslie Fay Companies, Inc., New York, NY; August 11, 1994.

NAFTA–TAA–00561; IMC Corp. of America, Williams Cabinet Div., Sutton, WV; August 9, 1994.

NAFTA–TAA–00580; Lakeview Lumber Products Co., Lakeview, OR: August 30, 1994.

NAFTA–TAA–00565; Jeld-Wen of Bend, Bend, OR: August 9, 1994.

NAFTA–TAA–00570; Gaylord Container, Weslaco, TX: August 17, 1994.

NAFTA–TAA–00571; International Verifact, Inc., Boulder, Co; August 16, 1994.

NAFTA–TAA–00569; The Peoples Gas Light & Coke Co., Synthetic Natural Gas Plant, Ellwood, IL: August 10, 1994.

NAFTA–TAA–00587; Motor Wheel Corp., Ypsilanti, MI: August 16, 1994.

NAFTA–TAA–00586; Gannet Co., Inc., Gannett Outdoor Co of Michigan, Detroit, MI: August 17, 1994.

I hereby certify that the aforementioned determinations were issued during the month of September, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 18, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–24773 Filed 10–4–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,662 & 662A]

McDonnell Douglas Corporation; Douglas Aircraft Company; Long Beach, California and Carson, California; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 23, 1995, applicable to all workers of McDonnell Douglas Corporation, Douglas Aircraft Company located in Long Beach, California. The notice was published in the Federal Register on April 10, 1995 (60 FR 18146).

At the request of the petitioners, the Department is amending the certification to include workers of the Carson facility of the subject firm. New information provided by the petitioners reveal that workers at Carson were inadvertently excluded from the certification. The workers at the McDonnell Douglas Carson, California location provide support services which directly relates to the production of commercial aircraft at the Long Beach manufacturing plant.

The intent of the Department's certification is to include all workers of McDonnell Douglas Corporation, Douglas Aircraft Company adversely affected by imports.

The amended notice applicable to TA–W–30,662 is hereby issued as follows:

All workers of McDonnell Douglas Corporation, Douglas Aircraft Company, Long Beach, California (TA–W–30,662) and Carson, California (TA–W–30,662A) engaged in employment related to the production of commercial aircraft who became totally or partially separated from employment on or after March 15, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of September 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–24770 Filed 10–4–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,122]

Mobil Exploration and Producing Technical Center (MEPTEC), a/k/a Mobil Research and Development Corporation (MRDC), a/k/a Research Engineering and Environmental Affairs (REEA), a/k/a Mobil Technology Company (MTC), a/k/a Mobil Research, Headquartered in Dallas, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 30, 1994, applicable to all workers of Mobil Exploration and Producing Technical Center (MEPTEC), headquartered in Dallas, Texas and operating at various locations in the United States. The notice was published in the Federal Register on October 21, 1994 (59 FR 53211).

At the request of the company, the Department reviewed the subject certification. New information received from the company shows that worker units within (MEPTEC) were inadvertently excluded from the certification. Accordingly, the Department is amending the certification to include workers of Mobil Research and Development Corporation (MRDC); Research Engineering and Environmental Affairs (REEA); Mobil Technology Company (MTC); and Mobil Research.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,122 is hereby issued as follows:

All workers of Mobil Exploration and Producing Technical Center (MEPTEC), a/k/a Mobil Research and Development Corporation (MRDC); a/k/a Research Engineering and Environmental Affairs (REEA); a/k/a Mobil Technology Company (MTC); and a/k/a Mobil Research headquartered in Dallas, Texas and operating out of various locations as listed below engaged in activities related to exploration and production of crude oil and natural gas who became totally or partially separated from employment on or after April 30, 1994 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974:

TA–W–30,122A California
TA–W–30,122B Colorado
TA–W–30,122C Kansas
TA–W–30,122D Louisiana
TA–W–30,122E Texas (exc Dallas).

Signed at Washington, D.C. this 22nd day of September 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–24771 Filed 10–4–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,097]

Seagull Energy Corporation; Mid Continent Region; All Locations in the State of Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 27, 1995, applicable to all workers at the subject firm in Amarillo, Texas. The notice was published in the Federal Register on July 19, 1995 (60 FR 37083).

At the request of the State Agency, the Department is amending the certification to cover worker separations that have occurred at other Seagull Energy locations in Texas.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by increased imports.

The amended notice applicable to TA–W–31,097 is hereby issued as follows:

All workers of Seagull Energy Corporation, Mid Continent Region, operating in various locations in the State of Texas who became totally or partially separated from employment on or after May 18, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of September 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–24772 Filed 10–4–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00578]

Bike Athletic Company; Knoxville, TN; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on August 28, 1995 in response to a petition filed on behalf of workers at the Bike Athletic Company located in Knoxville, Tennessee. Workers produce sports apparel.

In a letter dated August 31, 1995, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

A trade adjustment assistance investigation (TA–W–31,394) is currently underway to determine if workers are eligible to apply for benefits under the Trade Act of 1974. The investigation was instituted on September 5, 1995. A final determination should be made within 60 days of the institution date.

Signed at Washington, D.C., this 25th day of September 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–24775 Filed 10–4–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00470]

Seagull Energy Corp./Midcon, Inc. All Locations in the State of Texas; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on June 27, 1995, applicable to all workers at the subject firm. The notice was published in the Federal Register on July 19, 1995 (60 FR 37084).

At the request of the State Agency, the Department is amending the certification to cover worker separations that have occurred at other Seagull Energy locations in Texas.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports.

The amended notice applicable to NAFTA–00470 is hereby issued as follows:

All workers of Seagull Energy Corporation, Midcon, Inc., operating in various locations in the State of Texas who became totally or partially separated from employment on or after May 18, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of September 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–24774 Filed 10–4–95; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division

Application of the McNamara-O'Hara Service Contract Act to Motor Carriers

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice.

SUMMARY: The Wage and Hour Division has issued All Agency Memorandum No. 185 to contracting agencies of the Federal and District of Columbia governments. Memorandum No. 185 provides guidance on the applicability of the exemption provided in Section 7(3) of the McNamara-O'Hara Service Contract Act of 1965, as amended (SCA), for contracts for carriage subject to published tariff rates. In order to widely disseminate the guidance discussed in Memorandum No. 185, it is being published as a part of this Notice.

DATES: This Notice is effective October 5, 1995.

FOR FURTHER INFORMATION CONTACT: Branch of Service Contract Operations, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3018, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 219–7541. This is not a toll free number.

SUPPLEMENTARY INFORMATION: All Agency Memorandum was issued on September 28, 1995, to all contracting agencies of the Federal and District of Columbia governments. This document repeats that Memorandum.

September 28, 1995

MEMORANDUM NO. 185

TO: All Government Contracting Agencies of the Federal Government and the District of Columbia

FROM: MARIA ECHAVESTE, Administrator, Wage and Hour Division

SUBJECT: Application of Section 7(3) of the McNamara-O'Hara Service Contract Act to Motor Carriers

The McNamara-O'Hara Service Contract Act (SCA), 41 U.S.C. 351 *et seq.*, applies to all service contracts entered into by the Federal government and District of Columbia ''the principal

purpose of which is to furnish services in the United States through the use of service employees.'' The SCA requires that contractors and subcontractors with contracts (and any bid specification) in excess of $2,500 pay their service workers no less than the wages and fringe benefits specified by the Secretary of Labor. However, section 7 of the Act (41 U.S.C. 356) provides for several exemptions from the Act's coverage.

Section 7(3) of the SCA provides that ''any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect'' will not be subject to the Act's coverage. The regulations at 29 CFR 4.118 further elaborate that:

> a contract for transportation service does not come within this exemption unless the service contracted for is actually governed by published tariff rates in effect pursuant to State or Federal law for such carriage. The contracts excluded from the reach of the Act by this exemption are typically those where there is on file with the Interstate Commerce Commission or an appropriate State or local regulatory body a tariff rate applicable to the transportation involved, and the transportation contract between the Government and the carrier is evidenced by a Government bill of lading citing the published tariff rate.

In 1994, Congress enacted two pieces of legislation—the Trucking Industry Regulatory Reform Act of 1994 (TIRRA), Pub. L. 103–311 (effective August 26, 1994), and the Federal Aviation Administration Authorization Act of 1994 (FAA Authorization Act), Pub. L. No. 103–305, (effective January 1, 1995)—which amend certain provisions of the Interstate Commerce Act (ICA). As a consequence, interstate and intrastate motor *common* carriers providing transportation of property, other than household goods,[1] are no longer required to file tariff rates with the ICC or any State. See 49 U.S.C. 10761 and 10762. On an administrative basis, the ICC had earlier exempted motor *contract* carriers from such filing requirements, and TIRRA codified this regulatory action. See 49 U.S.C. 10762(a)(1). This exemption from filing rates includes motor carriers providing express service in transporting property. Therefore, motor carriers, with very limited exceptions,[2] clearly can no longer qualify for the statutory exemption.

These changes in the transportation law are the result of the increasingly competitive nature of the transportation of property or freight in the industry. Consequently, the basis for the SCA's section 7(3) exemption with regard to such motor carriers, is no longer compatible with the SCA's mission to protect service employees from the payment of substandard wages. The exemption was provided to ''regulated industries'' subject to published tariff rates because there did not exist the competitive situation faced in service contract cases generally. *See* Congressional Record, Vol. 111, 89th Cong., 1st Sess., 24387 (September 20, 1965) (statement of Rep. O'Hara). Under published tariff rates, contractors were required to offer services to the general public at a uniform rate. Because of the nature of the published tariff, contractors were not motivated to reduce their employees' wages in order to undercut bidders and obtain business. Conversely, however, the further deregulation of motor carriers providing transportation of property may induce some contractors to engage in substandard labor practices.

Therefore, contracts performed by a motor carrier, including those providing express service, for the interstate carriage of freight other than household goods awarded, or entered into beginning August 26, 1994, and such contracts for the intrastate carriage of freight other than household goods awarded, or entered into beginning January 1, 1995, fail to qualify for the section 7(3) exemption of the Service Contract Act. It is important to remember in applying this guidance that an option period or contract extension is normally a new contract for SCA purposes. See 29 C.F.R. 4.143–4.145.

Concerning whether another type of contract, such as a contract by a motor carrier for the carriage of personnel, personnel and freight, household goods, or a contract involving carriage by both a motor carrier and some other form of transportation, qualifies for the section 7(3) exemption will depend on the facts of each case. The Wage and Hour Division of the Department of Labor should be contacted concerning any question in that regard or with respect to the guidance provided in this memorandum.

[1] Generally, household goods are ''personal effects and property used or to be used in a dwelling,'' but they may also include ''furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals or other establishments when a part of the stock, equipment, or supply of such stores, offices,* * *'' 49 U.S.C. 10102(11) (A) and (B).

[2] Motor common carriers that engage in the transportation of household goods or passengers are presently still required to publish and file their tariff rates with the ICC. Also motor common carriers who are members of rate bureaus, which are now relatively few in number, may still be subject to tariff rates filed with the ICC by the bureau. See 49 U.S.C. 10706(b)(2).

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

Signed at Washington, D.C., on this 29th day of September, 1995.

Maria Echaveste,

Administrator, Wage and Hour Division.

[FR Doc. 95–24776 Filed 10–4–95; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Accident Investigation Procedures Review

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice; extension of comment period.

SUMMARY: In response to requests from the mining community for additional time in which to prepare comments, the Mine Safety and Health Administration (MSHA) is extending the period for public comment on its notice addressing the Agency's review of its accident investigation procedures and policies.

DATES: All comments must be submitted on or before December 11, 1995.

ADDRESSES: Send comments to either the Administrator, Coal Mine Safety and Health, 4015 Wilson Boulevard, Room 828, Arlington, VA 22203, Fax: 703–235–1517, or to the Administrator, Metal and Nonmetal Mine Safety and Health, 4015 Wilson Boulevard, Room 728, Arlington, VA 22203, Fax: 703–235–9173, as appropriate. Commenters are encouraged to send comments on a computer disk with their original comments in hard copy.

FOR FURTHER INFORMATION CONTACT: Jack Tisdale, Accident Investigation Program Manager, Division of Coal Mine Safety and Health, 703–235–1140, or David Park, Accident Investigation Program Manager, Division of Metal and Nonmetal Mine Safety and Health, 703–235–1565.

SUPPLEMENTARY INFORMATION: On August 10, 1995, MSHA published a notice in the Federal Register (60 FR 40859) inviting public input into its review of the Agency's accident investigation procedures and policies. The comment period was scheduled to close on October 10, 1995; however, by this notice, the Agency is extending the comment period to December 11, 1995. All interested parties are encouraged to submit comments prior to that date.

Dated: September 28, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–24706 Filed 10–4–95; 8:45 am]

BILLING CODE 4510–43–P

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Amax Coal Company

[Docket No. M–95–116–C]

Amax Coal Company, 9100 East Mineral Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Wabash Mine (I.D. No. 11–00877) located in Wabash County, Illinois. Due to deteriorating roof and rib conditions and accumulations of water in certain areas of the return air course, the area cannot be traveled safely. The petitioner proposes to establish evaluation points to monitor the affected area. The evaluation points would be established at crosscut #76 at the 3 South/4 East connection to monitor the air entering the Old 3 South/4 East and 5 East from the 3 South/4 East connection point and the Main South, and at crosscuts #186 and #196 in the Main south to monitor the air exiting the area; to have a certified person test for methane and the quantity of air at each station on a weekly basis and to record their initials, date, time, and results of the examinations in a book kept on the surface and made available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Snyder Coal Company

[Docket No. M–95–117–C]

Snyder Coal Company, R.D. #2, Box 93, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (mine map) to its N & L Slope (I.D. No. 36–02203) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope and to limit the required mapping of mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Consolidation Coal Company

[Docket No. M–95–118–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high- voltage cables) to its Robinson Run No. 95 Mine (I.D. No. 46-01318) located in Harrison County, West Virginia. The petitioner proposes to use high-voltage cables (4,160-volts) with an internal ground check conductor smaller than No. 10 A.W.G as a part of its longwall mining system. The type of cables would be CABLEC/BICC Anaconda brand, 5kV, 3/C, Type SHD+GC; Amercable Tiger brand, 3/C, 5kV, Type SHD-CGC; Pirelli 5kV, 3/C, Type SHD- CENTER-GC; or similar 5,000-volt cable with a center ground check conductor, but otherwise manufactured to the ICEA Standard S–75- 381 for Type SHD, three-conductor cables. The petitioner states that the cable construction would be symmetrical 3/C, 3/G, and 1/GC; that the ground check conductor would be an insulated flexible center conductor with a cross-sectional area not less than 1,800 circular mils; that all personnel who perform maintenance on the longwall would receive training in the installation and repair of the cable before the alternative method is implemented; and that proposed revisions for its approved 30 CFR Part 48 training plan would be submitted to the Coal Mine Safety and Health District Manager within 60 days after a decision has been made on this petition and that these revisions would specify task training, including review of the above terms and conditions for the miners affected. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Doverspike Bros. Coal Company, Inc.

[Docket No. M–95–119–C]

Doverspike Bros. Coal Company, Inc., R.D. #4, Box 271, Punxsutawney, Pennsylvania 15767 has filed a petition to modify the application of 30 CFR 75.380(d)(4) (escapeways; bituminous and lignite mines) to its Dora No. 6 Mine (I.D. No. 36–06583) located in Jefferson County, Pennsylvania. The petitioner proposes to maintain an alternate escapeway that would have a travelway with a minimum width of four feet and a total of 350 lineal feet instead of the required six-foot-wide escapeway. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Energy West Mining Company

[Docket No. M–95–120–C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its Trail Mountain Mine (I.D. No. 42–01211) located in Emery County, Utah. The petitioner requests a modification to its previously granted petition, docket number M–94–107–C, to use the Cablec Anaconda Brand 5KV 3/C type SHD+GC, Pirelli 5KV 3/C type SHD-Center-GC, or Tiger Brand 5KV type SHC-CGC on high-voltage longwall equipment, to include its new Trail Mountain Mine. The petitioner states that the Trail Mountain Mine is an extension of the Cottonwood Mine (I.D. No. 42–01944) with similar mining conditions and that mine personnel and mining equipment are systematically being transferred to this new mine as mining reserves are depleted. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Energy West Mining Company

[Docket No. M–95–121–C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (quantity and location of firefighting equipment) to its Trail Mountain Mine (I.D. No. 42–01211) located in Emery County, Utah. The petitioner requests a modification to its previously granted petition, docket number M–91–092–C, to use fire extinguishers instead of rock dust at temporary electrical installations, to include its new Trail Mountain Mine. The petitioner states that the Trail Mountain Mine is an extension of the Cottonwood Mine (I.D. No. 42–01944) with similar mining conditions and that mine personnel and mining equipment are systematically being transferred to this new mine as mining reserves are depleted. The petitioner asserts that the proposed alternative method would provide at

least the same measure of protection as would the mandatory standard.

7. H & S Coal Company

[Docket No. M–95–122–C]

H & S Coal Company, 534 Melrose Street, Marion Heights, Pennsylvania 17832 has filed a petition to modify the application of 30 CFR 75.332(b)(1) and (b)(2) (working sections and working places) to its No. 1 Slope (I.D. No. 36–08447) located in Northumberland County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. H & S Coal Company

[Docket No. M–95–123–C]

H & S Coal Company, 534 Melrose Street, Marion Heights, Pennsylvania 17832 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 1 Slope (I.D. No. 36–08447) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. H & S Coal Company

[Docket No. M–95–124–C]

H & S Coal Company, 534 Melrose Street, Marion Heights, Pennsylvania 17832 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its No. 1 Slope (I.D. No. 36–08447) located in Northumberland County, Pennsylvania. The petitioner proposes to charge its batteries on the mine's locomotive during idle periods when all miners have been removed from the mine and to allow the intake air used to ventilate the charging stations, located at the No. 1 chute of the active gangway level, to continue through its normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. H & S Coal Company

[Docket No. M–95–125–C]

H & S Coal Company, 534 Melrose Street, Marion Heights, Pennsylvania 17832 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 1 Slope (I.D. No. 36–08447) located in Northumberland County, Pennsylvania. The petitioner proposes to visually examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. H & S Coal Company

[Docket No. M–95–126–C]

H & S Coal Company, 534 Melrose Street, Marion Heights, Pennsylvania 17832 has filed a petition to modify the application of 30 CFR 75.364(b) (1), (4) and (5) (weekly examination) to its No. 1 Slope (I.D. No. 36–08447) located in Northumberland County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake haulage slope and primary escapeway cannot be traveled safely. The petitioner proposes to examine these areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and throughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

12. H & S Coal Company

[Docket No. M–95–127–C]

H & S Coal Company, 534 Melrose Street, Marion Heights, Pennsylvania 17832 has filed a petition to modify the application of 30 CFR 75.1002–1 (location of other electric equipment; requirements for permissibility) to its No. 1 Slope (I.D. No. 36–08447) located in Northumberland County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or during a pre-shift examination. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

13. H & S Coal Company

[Docket No. M–95–128–C]

H & S Coal Company, 534 Melrose Street, Marion Heights, Pennsylvania 17832 has filed a petition to modify the application of 30 CFR 75.1100–2 (quantity and location of firefighting equipment) to its No. 1 Slope (I.D. No. 36–08447) located in Northumberland County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

14. H & S Coal Company

[Docket No. M–95–129–C]

H & S Coal Company, 534 Melrose Street, Marion Heights, Pennsylvania 17832 has filed a petition to modify the application of 30 CFR 75.1200 (d) & (i) (mine map) to its No. 1 Slope (I.D. No. 36–08447) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

15. H & S Coal Company

[Docket No. M–95–130–C]

H & S Coal Company, 534 Melrose Street, Marion Heights, Pennsylvania 17832 has filed a petition to modify the

application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its No. 1 Slope (I.D. No. 36–08447) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

16. Performance Coal Company

[Docket No. M–95–131–C]

Performance Coal Company, P.O. Box 89, Naoma, West Virginia 25140 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Upper Big Branch South Mine (I.D. No. 46–08436) located in Raleigh County, West Virginia. The petitioner proposes to use high-voltage (4,160 volts) cables to power longwall equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

17. Martin County Coal Corporation

[Docket No. M–95–132–C and M–95–133–C]

Martin County Coal Corporation, P.O. Box 5002, Inez, Kentucky 41224 has filed a petition to modify the application of 30 CFR 75.1103–4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Pegasus Mine (I.D. No. 15–17330) and its White Cabin Mine Number One (I.D. No. 15–17531), both located in Martin County, Kentucky. The petitioner requests a modification of the standard to allow that the mine not be required at all times to specifically identify the belt flight from which a sensor indicates a possible fire. The petitioner states that its present system consists of a series of enhanced safety factors of rapid and effective communications and rapid response in the event of an activation of an automatic fire warning device and safe, direct, and effective means of evacuation of underground mines. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

18. Pilgrim Mining Coal Company, Inc.

[Docket No. M–95–134–C through M–95–136–C]

Pilgrim Mining Coal Company, Inc., P.O. Box 2046, Inez, Kentucky 41224 has filed a petition to modify the application of 30 CFR 75.1103–4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Voyager Mine Number One (I.D. No. 15–17585); its Voyager Mine Number Two (I.D. No. 15–17639); and its Pilgrim Mine Number Three (I.D. No. 17359), all located in Martin County, Kentucky. Petitioner requests a modification of the standard to allow that the mine not be required at all times to specifically identify the belt flight from which a sensor indicates a possible fire. The petitioner states that its present system consists of a series of enhanced safety factors of rapid and effective communications and rapid response in the event of an activation of an automatic fire warning device and safe, direct, and effective means of evacuation of underground mines. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

19. National King Coal, Inc.

[Docket No. M–95–137–C]

National King Coal, Inc., 4424 County Road 120, Hesperus, Colorado 81326 has filed a petition to modify the application of 30 CFR 75.380(d)(4)(ii) (escapeways; bituminous and lignite mines) to its King Coal Mine (I.D. No. 05–00266) located in La Plata County, Colorado. The petitioner proposes to have a secondary escapeway that passes through an 80-inch diameter metal culvert for a distance of about 20 feet running lengthwise and a row of supplemental roof support down the center, limiting the width of the secondary escapeway to about 40 inches on each side of the roof supports instead of the required 48 inches; to post signs in the secondary escapeway area leading to the metal culvert area that would read ''Caution—Close Clearance''; and to provide training for all existing and future underground employees on the existence of the narrow length of the escapeway, and the methods and practices of carrying a stretcher through a 40-inch opening. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 6, 1995. Copies of these petitions are available for inspection at that address.

Dated: September 27, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 95–24743 Filed 10–4–95; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL CREDIT UNION ADMINISTRATION

Cancellation of Hearing

AGENCY: National Credit Union Administration (NCUA).

ACTION: Cancellation of public hearing.

The NCUA Board had scheduled a public hearing on the appeal of NCUA's Region VI denial of a charter application for Proposed Montana Educators' Federal Credit Union for September 29, 1995 at 11:30 am. The notice for the hearing was published in the Federal Register on September 26, 1995, 60 FR 49636. The charter applicant has been granted a credit union charter by the state of Montana, rendering the appeal on the denial of the federal charter application unnecessary. The hearing is therefore cancelled.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–2428, 703–518–6304.

Dated: October 2, 1995.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–24760 Filed 10–4–95; 8:45 am]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Availability of Draft Application Format and Content Guidance and Review Plan and Acceptance Criteria for Non-Power Reactors

The U.S. Nuclear Regulatory Commission (NRC) is in the process of developing for Non-Power Reactor (NPRs) a ''Format and Content for

Applications for the Licensing of Non-Power Reactors'' (F&C) and a ''Standard Review Plan and Acceptance Criteria for Applications for the Licensing of Non-Power Reactors'' (SRP). The NRC has made available a draft of Chapter 17, ''Decommissioning and Possession-Only Amendments,'' of the F&C and SRP documents for comment. This chapter completes the draft documents.

Licensees should be aware that additional changes have been proposed to the decommissioning regulations (see 60 FR 37374 dated July 20, 1995). Therefore, the guidance provided in Chapter 17 is offered in the interim to facilitate the review of decommissioning activities during this period.

A copy of this chapter has been placed in the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555. Single copies of this chapter may be requested in writing from Alexander Adams, Jr., Senior Project Manager, U.S. Nuclear Regulatory Commission, MS: 0–11–B–20, Washington, DC 20555. Comments on this chapter should be sent by December 22, 1995, to the Director, Non-Power Reactors and Decommissioning Project Directorate at the above address.

Dated at Rockville, Maryland, this 29th day of September 1995.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 95–24765 Filed 10–4–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–237, 50–249, 50–254 and 50–265]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–19, DPR–25, DPR–29, and DPR–30 issued to Commonwealth Edison Company (the licensee) for operation of the Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois, and Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois.

The proposed amendment would close out open items identified in the NRC staff's review of the upgrade of the Dresden and Quad Cities Technical Specifications (TS) to the standard Technical Specifications (STS) contained in NUREG–0123. The Technical Specification Upgrade Program (TSUP) is not a complete adaption of the STS. The TS upgrade focuses on (1) integrating additional information such as equipment operability requirements during shutdown conditions, (2) clarifying requirements such as limiting conditions for operation and action statements utilizing STS terminology, (3) deleting superseded requirements and modifications to the TS based on the licensee's responses to Generic Letters (GL), and (4) relocating specific items to more appropriate TS locations. The September 15, 1995, application proposed to close out the open items from TSUP Sections 1.0, 3/4.4, 3/4.10, and 5.0 only.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Implementation of these changes will provide increased reliability of equipment assumed to operate in the current safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

Some of the proposed changes represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. The proposed amendment for Dresden and Quad Cities Station's Technical Specifications are based on STS guidelines or later operating BWR plants' NRC accepted changes. Any deviations from STS requirements do not significantly increase the probability or consequences of any previously evaluated accidents for Dresden or Quad Cities Stations. The proposed amendment is consistent with the current safety analyses and has been previously determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.

The associated systems related to this proposed amendment are not assumed in any safety analysis to initiate any accident sequence for Dresden or Quad Cities Stations; therefore, the probability of any accident previously evaluated is not increased by the proposed amendment. In addition, the proposed surveillance requirements for the proposed amendments to these systems are generally more prescriptive than the current requirements specified within the Technical Specifications. The additional surveillance requirements improve the reliability and availability of all affected systems and therefore, reduce the consequences of any accident previously evaluated as the probability of the systems related to the TSUP open items outlined within the proposed Technical Specifications performing their intended function is increased by the additional surveillances.

Create the possibility of a new or different kind of accident from any previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, the addition of requirements which are based on the current safety analysis, and some minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. These changes do not involve revisions to the design of the station. Some of the changes may involve revision in the operation of the station; however, these provide additional restrictions which are in accordance with the current safety analysis, or are to provide for additional testing or surveillances which will not introduce new failure mechanisms beyond those already considered in the current safety analyses.

The proposed amendment for Dresden and Quad Cities Station's Technical Specification is based on STS guidelines or later operating BWR plants' NRC accepted changes. The proposed amendment has been reviewed for acceptability at the Dresden and Quad Cities Nuclear Power Stations considering similarity of system or component design versus the STS or later operating BWRs. Any deviations from STS requirements do not create the possibility of a new or different kind of accident previously evaluated for Dresden or Quad Cities Stations. No new modes of operation are introduced by the proposed changes.

Surveillance requirements are changed to reflect improvements in technique, frequency of performance or operating experience at later plants. Proposed changes to action statements in many places add requirements that are not in the present technical specifications. The proposed changes maintain at least the present level of operability.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The associated systems related to this proposed amendment are not assumed in any safety analysis to initiate any accident sequence for Dresden or Quad Cities Stations. In addition, the proposed surveillance requirements for affected systems associated with the TSUP open items are generally more prescriptive than the current requirements specified within the Technical Specifications; therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Involve a significant reduction in the margin of safety because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, the addition of requirements which are based on the current safety analysis, and some minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. Some of the latter individual items may introduce minor reductions in the margin of safety when compared to the current requirements. However, other individual changes are the adoption of new requirements which will provide significant enhancement of the reliability of the equipment assumed to operate in the safety analysis, or provide enhanced assurance that specified parameters remain with their acceptance limits. These enhancements compensate for the individual minor reductions, such that taken together, the proposed changes will not significantly reduce the margin of safety.

The proposed amendment to the Technical Specifications implements present requirements, or the intent of present requirements in accordance with the guidelines set forth in the STS. Any deviations from STS requirements do not significantly reduce the margin of safety for Dresden or Quad Cities Stations. The proposed changes are intended to improve readability, usability, and the understanding of technical specification requirements while maintaining acceptable levels of safe operation. The proposed changes have been evaluated and found to be acceptable for use at Dresden or Quad Cities based on system design, safety analysis requirements and operational performance.

Since the proposed changes are based on NRC accepted provisions at other operating plants that are applicable at Dresden or Quad Cities and maintain necessary levels of system or component reliability, the proposed changes do not involve a significant reduction in the margin of safety.

The proposed amendment for Dresden and Quad Cities Stations will not reduce the availability of systems associated with the TSUP open items when required to mitigate accident conditions; therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 6, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Morris Public Library, 604 Liberty Street, Morris, Illinois for Dresden and the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois for Quad Cities. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of

the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mr. Robert Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 15, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Morris Public Library, 604 Liberty Street, Morris, Illinois for Dresden and at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois for Quad Cities.

Dated at Rockville, Maryland, this 29th day of September 1995.

For the Nuclear Regulatory Commission.

Donna M. Stay,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–24763 Filed 10–4–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. STN 50–456 And STN 50–457]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–72 and NPF–77, issued to Commonwealth Edison Company for operation of the Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The proposed amendments would effectively renew the present voltage-based repair criteria in the Braidwood, Unit 1, Technical Specifications (TS) which were added to the existing steam generator (SG) tube repair criteria by License Amendment No. 54, issued on August 18, 1994. The differences between the present repair criteria in the Braidwood, Unit 1, TSs and those in the pending request to continue their use, are discussed below. The need to take action on this matter arises partly from the limit placed on the use of the present voltage-based criteria for only one operating cycle when the license amendment cited above was issued.

The voltage-based repair criteria in the subject TSs are applicable only to a specific type of SG tube degradation which is predominantly axially-oriented outer diameter stress corrosion cracking (ODSCC). This particular form of SG tube degradation occurs entirely within the intersections of the SG tubes with the tube support plates (TSP).

The need to effectively renew the present voltage-based SG tube repair criteria is also predicated on the possibility that the NRC staff may not find acceptable, a pending request for license amendments dated September 1, 1995, for the Byron and Braidwood Stations in sufficient time to be applicable for the forthcoming refueling outage for Braidwood, Unit 1, presently scheduled to start on September 30, 1995.

This request for a 3.0 volt lower voltage limit was first submitted on February 13, 1995, and was subsequently superseded by requests for license amendments submitted on July 7, 1995, and September 1, 1995. All three of these requests for license amendments propose to raise the present value of the lower voltage repair limit from 1.0 volt to 3.0 volts. The license amendment request dated September 1, 1995, supersedes the prior two requests on this matter in their entirety.

The license amendment request dated September 1, 1995, is under active review by the staff; however, a number of technical issues associated with this pending revision to the present TSs may require considerable time to resolve. In the event that the staff is not able to resolve these outstanding technical issues prior to the repair of the Braidwood, Unit 1, SG tubes presently scheduled to start on or about October 15, 1995, the licensee proposes in its request dated August 15, 1995, to adopt the SG tube repair criteria contained in Generic Letter (GL) 95–05, ''Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking,'' dated August 3, 1995.

The SG tube voltage-based repair criteria presently in the Braidwood, Unit 1, TSs differ slightly from those proposed in the licensee's submittal dated August 15, 1995, in that the present repair criteria in the TSs were similar to those in the draft generic letter on the issue of ODSCC published by the staff on August 12, 1994, while the pending proposal is consistent with GL 95–05. This generic letter contains repair criteria slightly different from those contained in the earlier draft version. These differences reflect the staff's further review of this matter, including a review of comments by industry and the public.

In summary, the request for license amendments dated August 15, 1995, to adopt the voltage-based repair criteria in GL 95–05 will be considered by the staff only in the event that the pending request to raise the lower voltage limit from 1.0 volt to 3.0 volts can not be addressed in a timely manner.

While the voltage-based repair criteria for ODSCC flaws are applicable only to Braidwood, Unit 1, the pending request for license amendments involves both units in that the Braidwood Station has a set of TSs applicable to both units. Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Consistent with Regulatory Guide (RG) 1.121, ''Basis for Plugging Degraded PWR Steam Generator Tubes,'' Revision 0, August 1976, the traditional depth-based criteria for SG tube repair implicitly ensures that tubes accepted for continued service will retain adequate structural and leakage integrity during normal operating, transient, and postulated accident conditions. It is recognized that defects in tubes permitted to remain in service, especially cracks, occasionally grow entirely through-wall and develop small leaks. Limits on allowable primary-to-secondary leakage established in Technical Specifications ensure timely plant shutdown before the structural and leakage integrity of the affected tube is challenged.

The proposed license amendment request to implement voltage amplitude SG tube support plate APC for Braidwood Unit 1 meets the requirements of RG 1.121. The APC methodology demonstrates that tube leakage is acceptably low and tube burst is a highly improbable event during either normal operation or the most limiting accident condition, a postulated main steam line break (MSLB) event.

During transients, the tube support plate (TSP) is conservatively assumed to displace due to the thermal-hydraulic loads associated with the transient. This may partially expose a crack which is within the boundary of the TSP during normal operations to free span conditions. Burst is therefore conservatively evaluated assuming the crack is fully exposed to free span conditions. The structural eddy current bobbin coil voltage limit for free-span burst is 4.75 volts. This limit takes into consideration a 1.43 safety factor applied to the steam line break differential pressure that is consistent with RG 1.121 requirements. With additional considerations for growth rate assumptions and an upper 95% confidence estimate on voltage variability, the maximum voltage indication that could remain in service is given by the upper voltage repair limit equation in Generic Letter 95–05. For added conservatism, the allowable indication voltage is further reduced in the proposed amendment to a 1.0 volt confirmed ODSCC indication limit. All indications greater than 1.0 volt will be subject to an RPC examination. Tubes with RPC confirmed outside diameter stress corrosion cracking (ODSCC) indications will be plugged or sleeved. Any ODSCC indications between 1.0 volt and the upper voltage repair limit which are not confirmed as ODSCC will be allowed to remain in service since these indications are not as likely to affect tube structural integrity or leakage integrity over the next operating cycle as the indications that are detectable by both bobbin and rotating pancake coil (RPC) inspections.

The eddy current inspection process has been enhanced to address RG 1.83, ''Inservice Inspection of PWR Steam Generator Tubes,'' Revision 1, July 1975, considerations as well as the EPRI SG Inspection Guidelines. Enhancements in accordance with Generic Letter 95–05 are in place to increase detection of ODSCC indications and to ensure reliable, consistent acquisition and analysis of data. Based on the conservative selection of the voltage criteria and the increased ability to identify ODSCC, the probability of tube failure during an accident is also not significantly increased due to application of requested APC.

Modification of the Braidwood Specifications for conformance with Generic Letter 95–05 requirements does not impact any accidents previously evaluated. The decrease in the allowed burst probability from 2.5×10^{-2} to 1.0×10^{-2} is conservative.

Calculations conducted for Braidwood have shown that the resulting 2-hour doses at the site boundaries will not currently exceed an appropriately small fraction of 10 CFR 100 dose guideline values in conjunction with the predicted MSLB leakage calculated in accordance with this submittal and a DE I–131 level of 1.0 μCi/gm. The site allowable leakage calculated using a DE I–131 level of 1.0 μCi/gm is 9.4 gallons per minute (gpm). This leakage includes accident leakage and the allowed 0.1 gpm primary-to-secondary leakage of the 3 unfaulted SGs per TS 3.4.6.2.c. However, in order to provide a defense in depth approach to application of this requested APC and to envelope any future increases in MSLB leakage due to tube degradation, Braidwood is lowering the RCS DE I–131 levels to 0.35 μCi/gm for all future cycles until SG replacement. The site allowable leak rate calculated using 0.35 μCi/gm DE I–131 is 26.8 gpm. This leakage also includes accident leakage and the allowed 0.1 gpm primary-to-secondary leakage of the 3 unfaulted SGs per TS 3.4.6.2.c. Lowering the limit to 0.35 μCi/gm DE I–131 is conservative and will not increase the probability or consequences of any accidents previously evaluated.

Renewal of the 1.0 volt IPC for Braidwood Unit 1 does not adversely affect steam generator tube integrity and results in acceptable dose consequences. Therefore, the proposed license amendment request does not result in any significant increase in the probability or consequences of an accident previously evaluated within the Braidwood Updated Final Safety Analysis Report.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Renewal of the proposed SG tube APC for Braidwood Unit 1 does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism which could result in an accident outside the tube support plate elevations since industry experience indicates that ODSCC originating within the tube support plate does not extend significantly beyond the thickness of the support plate. This criteria only applies to ODSCC contained within the region of the tube bounded by the tube support plate. Therefore, neither a single or multiple tube rupture event would be expected in a steam generator in which APC has been applied.

In addressing the combined effects of Loss of Coolant Accident (LOCA) coincident with a Safe Shutdown Earthquake (SSE) on the SG (as required by General Design Criteria 2), it has been determined that tube collapse of select tubes may occur in the SGs at some plants, including Braidwood Unit 1. There are two issues associated with SG tube collapse. First, the collapse of SG tubing reduces the RCS flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase Peak Clad Temperature (PCT). Second, there is a potential that partial through-wall cracks in tubes could progress to through-wall cracks during tube deformation or collapse. A number of tubes

have been identified, in the ''wedge'' locations of the SG TSPs, that demonstrate the potential for tube collapse during a LOCA + SSE event. Because of this potential, these tubes have been excluded from application of the voltage-based SG TSP APC.

ComEd has implemented a maximum primary to secondary leakage limit of 150 gallons per day (gpd) through any one SG at Braidwood to help preclude the potential for excessive leakage during all plant conditions. The 150 gpd limit provides for leakage detection and plant shutdown in the event of an unexpected single crack leak associated with the longest permissible free span crack length. The 150 gpd limit provides adequate leakage detection and plant shutdown criteria in the event an unexpected single crack results in leakage that is associated with the longest permissible free span crack length. Since tube burst is precluded during normal operation due to the proximity of the TSP to the tube and the potential exists for the crevice to become uncovered during MSLB conditions, the leakage from the maximum permissible crack must preclude tube burst at MSLB conditions. Thus, the 150 gpd limit provides a conservative limit to prompt plant shutdown prior to reaching critical crack lengths under MSLB conditions.

Calculations conducted for Braidwood have shown that the resulting 2-hour doses at the site boundaries will not currently exceed an appropriately small fraction of 10 CFR 100 dose guideline values in conjunction with the predicted MSLB leakage calculated in accordance with this submittal and a DE I–131 level of 1.0 μCi/gm. The site allowable leakage calculated using a DE I–131 level of 1.0 μCi/gm is 9.4 gpm. This leakage includes accident leakage and the allowed 0.1 gpm primary-to-secondary leakage of the 3 unfaulted SGs per TS 3.4.6.2.c. However, in order to provide a defense in depth approach to application of this requested APC and to envelope any future increases in MSLB leakage due to tube degradation, Braidwood is lowering the RCS DE I–131 levels to 0.35 μCi/gm for all future cycles until SG replacement. The site allowable leak rate calculated using 0.35 μCi/gm DE I–131 is 26.8 gpm. This leakage also includes accident leakage and the allowed 0.1 gpm primary-to-secondary leakage of the 3 unfaulted SGs per TS 3.4.6.2.c. Lowering the Braidwood Unit 1 RCS DE I–131 concentration limit to the 0.35 μCi/gm is conservative and will not introduce any changes to the design basis for Braidwood Station.

Modification of the Braidwood Specifications for conformance with Generic Letter 95–05 requirements will not alter the plant design basis. The decrease in the allowed burst probability from 2.5×10^{-2} to 1.0×10^{-2} is conservative.

Upon renewal of the 1.0 volt APC for Braidwood Unit 1, steam generator tube integrity continues to be maintained through inservice inspection and primary-to-secondary leakage monitoring. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The use of the voltage based bobbin coil probe SG TSP APC for Braidwood Unit 1 will maintain steam generator tube integrity commensurate with the criteria of RG 1.121 as discussed above. Upon implementation of the criteria, even under the worst case conditions, the occurrence of ODSCC at the TSP elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The distribution of crack indications at the TSP elevations results in acceptable primary-to-secondary leakage during all plant conditions and radiological consequences are not adversely impacted by the application of APC.

The installation of SG tube plugs and sleeves reduces the RCS flow margin. As noted previously, renewal of the SG TSP APC will decrease the number of tubes which must be repaired by plugging or sleeving. Thus, renewal of APC will retain additional flow margin that would otherwise be reduced due to increased tube plugging. Therefore, no significant reduction in the margin of safety will occur as a result of this proposed license amendment request.

Although not relied upon to prove adequacy of the proposed amendment request, the following analyses demonstrate that significant conservatisms exist in the methods and justifications described above:

Limited Tube Support Plate Displacement

An analysis was performed to verify the extent of limited TSP displacement during accident conditions (MSLB). Application of minimum TSP displacement assumptions provides conservatism and reduces the likelihood of a tube burst to negligible levels. Consideration of limited TSP displacement would also reduce potential MSLB leakage when compared to the leakage calculated assuming free span indications.

Probability of Detection

The Electric Power Research Institute (EPRI) Performance Demonstration Program analyzed the performance of approximately 20 eddy current data analysts evaluating data from a unit with ¾″ inside diameter and 0.043″ wall thickness tubes. The results of this analysis clearly show that the detectability of larger voltage indications is increased which lends creditability for application of a POD of > 0.6 for ODSCC indications larger than 1.0 volt.

Risk Evaluation of Core Damage

As part of ComEd's evaluation of the operability of Braidwood Unit 1, a risk evaluation was completed. The objective of this evaluation was to compare core damage frequency under containment bypass conditions, with and without the APC applied at Braidwood Unit 1. The total Braidwood core damage frequency is estimated to be 3.09E–5 per reactor year with a total contribution from containment bypass sequences of 3.72E–8 per reactor year according to the results of the current individual plant evaluation (IPE). Operation with the requested APC resulted in an insignificant increase in core damage frequency resulting from MSLB with containment bypass conditions.

Calculations conducted for Braidwood have shown that the resulting 2-hour doses at the site boundaries will not currently exceed an appropriately small fraction of 10 CFR 100 dose guideline values in conjunction with the predicted MSLB leakage calculated in accordance with this submittal and a DE I–131 level of 1.0 μCi/gm. The site allowable leakage calculated using a DE I–131 level of 1.0 μCi/gm is 9.4 gpm. This leakage includes accident leakage and the allowed 0.1 gpm primary-to-secondary leakage of the 3 unfaulted SGs per TS 3.4.6.2.c. However, in order to provide a defense in depth approach to application of this requested APC and to envelope any future increases in MSLB leakage due to tube degradation, Braidwood is lowering the RCS DE I–131 levels to 0.35 μCi/gm for all future cycles until SG replacement. The site allowable leak rate calculated using 0.35 μCi/gm DE I–131 is 26.8 gpm. This leakage also includes accident leakage and the allowed 0.1 gpm primary-to-secondary leakage of the 3 unfaulted SGs per TS 3.4.6.2.c. Lowering the Braidwood Unit 1 RCS DE I–131 concentration limit to the 0.35 μCi/gm is conservative and will not introduce any changes to the design basis for Braidwood Station. Thus this change is in conformance with Braidwood's current TS and does not involve a reduction in a margin of safety.

Modification of the Braidwood Specifications for conformance with Generic Letter 95–05 requirements will not reduce any safety margins. The decrease in the allowed burst probability from 2.5×10^{-2} to 1.0×10^{-2} is conservative.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to

take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 6, 1995, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mr. Robert A. Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated August 15, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 29th day of September 1995.

For the Nuclear Regulatory Commission.

George F. Dick,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

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BILLING CODE 7590–01–P

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity For a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–29 and DPR–30 issued to Commonwealth Edison Company (the licensee) for operation of the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois.

The proposed amendment would upgrade the Quad Cities TS to the standard Technical Specifications (STS) contained in NUREG–0123. The Technical Specification Upgrade Program (TSUP) is not a complete adaption of the STS. The TS upgrade focuses on (1) integrating additional information such as equipment operability requirements during shutdown conditions, (2) clarifying requirements such as limiting conditions for operation and action statements utilizing STS terminology, (3) deleting superseded requirements and modifications to the TS based on the licensee's responses to Generic Letters (GL), and (4) relocating specific items to more appropriate TS locations. The September 20, 1995, application proposed to upgrade only Section 6.0 (Administrative Controls) of the Quad Cities TS.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analyses. Implementation of these changes will provide increased reliability of equipment assumed to operate in the current safety analyses, or provide continued assurance that specified parameters remain with-in their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

Some of the proposed changes represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. The proposed amendment for Quad Cities Station's Technical Specification Section 6.0 are based on STS guidelines or later operating plant's NRC accepted changes. Any deviations from STS requirements do not significantly increase the probability or consequences of any previously evaluated accidents for Quad Cities Station. The proposed amendment is consistent with the current safety analyses and has been previously determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analyses, or provide continued assurance that specified parameters remain within their acceptance limits. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.

Create the possibility of a new or different kind of accident from any previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analyses. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. These changes do not involve revisions to the design of the station. Some of the changes may involve revision in the operation of the station; however, these provide additional restrictions which are in accordance with the current safety analyses, or are to provide for additional testing or surveillances which will not introduce new failure mechanisms beyond those already considered in the current safety analyses.

The proposed amendment for Quad Cities Station's Technical Specification Section 6.0 is based on STS guidelines or later operating plants' NRC accepted changes. The proposed amendment has been reviewed for acceptability at the Quad Cities Nuclear Power Station considering similarity of system or component design versus the STS or later operating plants. Any deviations from STS requirements do not create the possibility of a new or different kind of accident previously evaluated for Quad Cities Station. No new modes of operation are introduced by the proposed changes. The proposed changes maintain at least the present level of operability. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Involve a significant reduction in the margin of safety because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analyses. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. Some of the later individual items may introduce minor reductions in the margin of safety when compared to the current requirements. However, other individual changes are the adoption of new requirements which will provide significant enhancement of the reliability of the equipment assumed to operate in the safety analyses, or provide enhanced assurance that specified parameters remain with their acceptance limits. These enhancements compensate for the individual minor reductions, such that taken together, the proposed changes will not significantly reduce the margin of safety.

The proposed amendment to Technical Specification Section 6.0 implements present requirements, or the intent of present requirements in accordance with the guidelines set forth in the STS. Any deviations from STS requirements do not significantly reduce the margin of safety for Dresden or Quad Cities Station. The proposed changes are intended to improve readability, usability, and the understanding of technical specification requirements while maintaining acceptable levels of safe operation. The proposed changes have been evaluated and found to be acceptable for use at Quad Cities based on system design, safety analyses requirements and operational performance. Since the proposed changes are based on NRC accepted provisions at other operating plants that are applicable at Quad Cities and maintain necessary levels of system or component reliability, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 6, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mr. Robert Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the

presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 20, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Rockville, Maryland, this 29th day of September, 1995.

For the Nuclear Regulatory Commission.

Robert M. Pulsifer,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–24767 Filed 10–4–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 30–33725; License No. 37–28442–02 EA 95–183]

J&L Testing Company, Inc., Canonsburg, PA; Order Suspending License (Effective Immediately)

I

J&L Testing Company, Inc., (Licensee or JLT) is the holder of Byproduct Nuclear Material License No. 37–28442–02 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of Cesium-137 and Americium-241 in sealed sources. The license, originally issued on February 7, 1995, was amended on August 22, 1995, and is due to expire on February 29, 2000.

II

J&L Engineering, Inc., (JLE) a corporation located at the same address and using the same telephone and facsimile numbers as the Licensee, held license No. 37–28442–01 for the same three gauges for which the Licensee is now licensed. John Boschuk, the president of JLE, is the co-owner, along with Lourdes T. Boschuk, of JLT. JLE's license was revoked on August 30, 1993, for non-payment of fees and JLE was ordered, in part, to cease use of byproduct material, dispose of the byproduct material, and notify the NRC of the disposition within 30 days of that order. On October 5, 1994, a Notice of Violation (Notice) was issued to JLE for possession of licensed material without a valid NRC license, as its NRC license had been revoked. On October 11, 1994, John Boschuk responded to the Notice, stating, among other things, that the ''* * *equipment [3-Troxler Nuclear Density gauges] has not been used for over 2 years and has not left the storage area in our office.''

On November 21, 1994, JLT submitted an application for a license. The November 21, 1994 cover letter for the application, signed by Lourdes T. Boschuk, President of JLT, stated the following:

> * * * submitted herein is our application to restore our expired license to store and operate three (3) Troxler Nuclear Density Gauges (sic). We understand our license was revoked on August 30, 1993. Since that date, these units were not removed from storage nor used in anyway (sic).

Relying on the application and the statement concerning use of the gauges after the time the JLE license was revoked, the NRC issued a new license (License No. 37–28442–02) to JLT on February 7, 1995.

On August 1 and 3, 1995, the NRC conducted a routine safety inspection of activities authorized by License No. 37–28442–02 at the Licensee's facility in Canonsburg, Pennsylvania. During the inspection, an NRC inspector determined, based on a review of utilization logs, that one of the gauges, which JLE and the Licensee separately had stated in writing to the NRC were in storage, had been used on September 1 and 2, 1994 (at a temporary jobsite at the S. Hill Village Sears project), by either JLE or JLT (when neither possessed an NRC license). The use of this gauge without a valid NRC license was in violation of 10 CFR 30.3, which prohibits use of byproduct material without a valid license from the NRC. In addition to this violation, the statements by Ms. Boschuk, in her November 21, 1994 letter to the NRC, and by Mr. Boschuk, in his October 11, 1994 letter to the NRC, were not accurate and, therefore, constituted a violation of 10 CFR 30.9.

During the August 1995 inspection three additional violations of NRC requirements were identified. These violations involved the failure to perform leak tests of the devices (gauges) at the required 6-month intervals as required by Condition 12 of the license, the failure to have an approved Radiation Safety Officer (RSO) (the RSO listed on the license terminated employment on May 26, 1995) as required by License Condition 11A, and the failure to perform inventories of the gauges at the required 6-month intervals as required by Condition 14 of the license. By letter dated September 11, 1995, the Licensee's president stated that the facts of these violations were correct.

A predecisional enforcement conference was held with the Licensee on September 15, 1995, to discuss the five violations identified during the August 1995 inspection. At the conference JLT's president admitted all five violations but offered no explanations for why the material had been used notwithstanding the revocation of JLE's license or for the inaccurate statements made to the NRC.

In addition, based on a September 22, 1995, letter from the State of New York to JLT, it appears that JLT had not requested or obtained reciprocity for use of radioactive materials as required by regulations of the State of New York. JLT also appears to have provided false statements to the New York State Department of Labor concerning use of radioactive material in New York State.

III

Although the NRC has initiated an investigation into these violations, based on the above and on information developed to date, the NRC concludes that the Licensee violated NRC requirements by: (1) providing inaccurate information to the Commission, a violation of 10 CFR 30.9; (2) using and possessing licensed material without a valid NRC license, a violation of 10 CFR 30.3; (3) not performing leak tests of the gauges at the required 6-month intervals, a violation of License Condition 12; (4) not having an approved Radiation Safety Officer (RSO), a violation of License Condition 11A; and (5) not performing inventories of the gauges at the required 6-month intervals, a violation of License Condition 14.

The Atomic Energy Act of 1954, as amended (Act), limits possession and use of byproduct material to those who possess a valid NRC license. In this case, the Licensee's use of the gauge without a license is a significant regulatory concern, particularly in view of the inaccurate information submitted to the Commission in response to the Notice (JLE's October 11, 1994 letter) and in support of an NRC license application (JLT's November 21, 1994 letter). Such inaccurate information was material and influenced the NRC's decision to grant the Licensee an NRC license. The NRC's concern is further heightened given the potential safety significance of the other violations - failure to have an approved RSO, failure to perform required leak tests of the gauges, and failure to perform periodic inventories of the gauges.

While the investigation is ongoing, the NRC has concluded based upon the information developed to date that the Licensee, through its co-owners, who

knew that JLE's license had been revoked, knew that the NRC had requested a formal response to a Notice of Violation, and knew it was submitting information to influence the NRC to grant it a new license, provided inaccurate information in response to a Notice of Violation and in obtaining a license from the Commission. In light of the above and regulatory significance of the submittals, the staff concludes that the submittal of this false information, if not deliberate, was in careless disregard of Commission requirements. Further, based on the correspondence and co-ownership of JLE and the JLT, the NRC concludes that Mr. and Ms. Boschuk, co-owners of the JLT, are responsible for compliance with NRC requirements.

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. The Licensee, through its representatives, has demonstrated an unwillingness or inability to comply with NRC requirements. The Licensee's misrepresentations to the NRC, as well as its actions in violating other NRC requirements, have raised serious doubt as to whether it can be relied upon in the future to provide complete and accurate information to the NRC or to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License No. 37–26442–02 in compliance with the Commission's requirements and that the health and safety of the public, including the Licensee's employees, will be protected if the Licensee is permitted to conduct licensed activities at this time. Therefore, the public health, safety, and interest require that License No. 37–26442–02 be suspended, with the exception of certain requirements enumerated in Section IV below pending the completion of the investigation. Furthermore, pursuant to 10 CFR 2.202, I find that in light of the willfulness of the Licensee's conduct, the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, It is hereby ordered, effective immediately, that License No. 37–28442–02 is suspended as follows:

Pending further investigation and Order by the NRC:

A. All NRC-licensed material in the Licensee's possession shall be placed in locked storage.

B. The Licensee shall suspend all activities under its license to use or transfer licensed material. The Licensee shall provide prior notice to the NRC, Region I before transferring the sources. All other requirements of the license remain in effect.

C. The Licensee shall not receive any NRC-licensed material while this Order is in effect.

D. All records related to licensed activities must be maintained in their original form and must not be removed or altered in any way.

The Regional Administrator, Region I, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons why the Order should not have been issued. Any answer or request for hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415, and to the Licensee, if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the same time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Part IV of this Order shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 27th day of September 1995.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 95–24764 Filed 10–4–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36295; File No. SR–CBOE–95–51]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Listing and Trading of Options on the CBOE Automotive Index

September 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on August 31, 1995, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade options on the CBOE Automotive Index (''Automotive Index'' or ''Index''). The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style [3] stock index options on the Automotive Index.

Index Design

The Automotive Index consists of ten companies involved in the design and manufacture of automobiles and automotive parts (replacement and original equipment).[4] All of the stocks currently comprising the Index currently trade on the New York Stock Exchange (''NYSE''). No proxy for the performance of this industry group is currently available in the U.S. exchange-traded derivatives markets, and the Exchange believes that options on the Index will provide investors with a low-cost means to participate in the performance of or to hedge the risk of investments in this sector.

The components comprising the Index ranged in capitalization from $2.3 billion to $36.4 billion as of July 31, 1995. The total capitalization as of that date was $112.2 billion; the mean capitalization was $11.2 billion; and the median capitalization was $4.8 billion. The largest component accounted for 20% of the total weighting of the Index, while the smallest accounted for 5.00%. The top five components accounted for 68.33% of the total weight of the Index.

Index Calculation

The Index will be calculated by CBOE or its designee on a real-time basis using last-sale prices and will be disseminated every 15 seconds by CBOE. If a component security is not currently being traded on its primary market, the most recent price at which the security traded on such market will be used in the Index calculation.

The Index is calculated on a ''modified equal-dollar-weighted'' method. Each of the ten component securities is represented in dollar amounts that approximate the relative sizes of the companies in the Index. The Exchange believes that this methodology will present a fair representation of the automotive industry without assigning excessive weight to the top three securities (GM, F, and C), as measured by market capitalization. The initial component weights, and the weights at the time of the last quarterly rebalancing on June 16, 1995, were: GM—20%, F—17.5%, C—12.5%, GT—10%, ETN—8.33%, GPC—8.33%, TRW—8.33%, DCN—5%, ECH—5%, and MGA—5%.

The value of the Index equals the current combined market value (based on U.S. primary market prices) of the assigned number of shares of each of the components in the Index divided by the current Index divisor. The Index divisor was initially calculated to yield a benchmark value of 150.00 at the close of trading on December 16, 1994. The value of the Index at the close on July 31, 1995, was 179.93.

Maintenance

The Index will be maintained by CBOE. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes include, but are not limited to, certain rights issuances, quarterly re-balancing, and component security changes.

The Index is re-balanced after the close of business on Expiration Fridays on the March Quarterly Cycle. In addition, the Index will be reviewed on approximately a monthly basis by the CBOE staff. The CBOE may change the composition of the Index at any time to reflect changes affecting the components of the Index or the Automotive industry generally. If it becomes necessary to remove a component from the Index, every effort will be made to add a component that preserves the character of the Index. In such circumstances, CBOE will take into account the capitalization, liquidity, volatility, and name recognition of the proposed replacement component. CBOE will not decrease the number of components to less than 9 nor increase the number of components to more than 13. All replacement securities will be ''reported securities'' as defined in Rule 11Aa3–1 of the Securities Exchange Act of 1934.

Additionally, the Exchange will not make any composition change to the Index that would result in less than 80% of the number of components or 90% of the weight of the Index satisfying the initial listing criteria in CBOE Rule 5.3 (for components which are not the subject of standardized options trading) or the maintenance criteria in CBOE Rule 5.4 (for components which are currently the subject of standardized options trading).

Index Option Trading

The Exchange proposes to base trading in options on the Automotive Index on the full value of that Index. The Exchange may list full-value long-term index option series (''LEAPS''), as provided in Rule 24.9. The Exchange also may provide for the listing of reduced-value LEAPS, for which the underlying value would be computed at one-tenth of the value of the Index. The current and closing index value of any such reduced-value LEAPS will, after such initial computation, be rounded to the nearest one-hundredth.

Exercise and Settlement

Automotive Index options will have European-style exercise and will be ''A.M.-settled index options'' within the meaning of the Rules in Chapter XXIV, including Rule 24.9, which is being amended to refer specifically to Automotive Index Options. The proposed options will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

[3] European-style options can only be exercised during a specified period before the options expire.

[4] The components of the Index are: Chrysler Corporation Holding Co. (''C''); Dana Corp. (''DCN''); Echlin Inc. (''ECH''); Eaton Corp. (''ETN''); Ford Motor Co. (''F''); General Motors Corp. (''GM''); Genuine Parts Co. (''GPC''); Goodyear Tire and Rubber Co. (''GT''); Magna International Inc. (''MGA''); and TRW Inc. (''TRW'').

Exchange Rules Applicable

Except as modified herein, the Rules in Chapter XXIV will be applicable to Automotive Index options. In accordance with Chapter XXIV of CBOE's Rules, the Index will be treated as a narrow-based index for purposes of policies regarding trading halts and suspensions,[5] and margin treatment.[6]

Index option contracts based on the Automotive Index will be subject to the position limit requirements of Rule 24.4, pursuant to which position and exercise limits for options on the Index would currently be set at 7,500 contracts. Positions in Index LEAPS will be aggregated with positions in Index options on a one-for-one basis. Ten reduced-value options will equal one full-value contract for purposes of aggregating positions.

CBOE has the necessary systems capacity to support new series that would result from the introduction of the Automotive Index options. CBOE has also been informed that OPRA has the capacity to support such new series.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will permit trading in options based on the Automotive Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

The rule proposal will also serve to further these objectives by providing investors with the ability to invest in options based on an additional index.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consent, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–CBOE–95–51 and should be submitted by October 26, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–24716 Filed 10–4–95; 8:45 am]

BILLING CODE 8010–01–M

[5] See CBOE Rule 24.7.

[6] See CBOE Rule 24.11.

[7] 17 CFR 200.30–3(a)(12).

[Release No. 34–36302; File No. SR–CBOE–95–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Interruption of the Retail Automated Execution System Following Certain Analyst's Reports

September 29, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 12, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to promulgate a policy concerning the application of CBOE Rule 6.6, ''Unusual Market Conditions,'' in the circumstance where the Exchange has determined that the televised reporting of a particular securities analyst has had a regular, albeit short-lived, destabilizing impact on the options market.[1] Specifically, the Exchange proposes to declare a ''fast'' market for a short period of time each day for options of the class or classes of stock(s) identified in the analyst's report and to temporarily deactivate the Exchange's Retail Automated Execution System (''RAES'') for the affected options until the stock prices in the primary market and options prices in RAES have adjusted, which is likely to occur within one or two minutes following the report. The Exchange plans to announce the policy through a regulatory circular to its members.

The text of the proposal is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C), of the most significant aspects of such statements.

[1] CBOE Rule 6.6 allows two or more floor officials, because of an influx of orders or other unusual conditions or circumstances, and in the interest of maintaining a fair and orderly market, to declare the market in one or more classes of option contracts to be ''fast.'' Under CBOE Rule 6.6, the floor officials declaring the fast market have the power to take actions that are deemed necessary in the interest of maintaining a fair and orderly market.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to implement procedures in response to a situation currently confronting the Exchange whereby a well-known securities analyst presents over cable television, at the same time each day, an exclusive report of his analysis of a specific identified company or companies, often involving conjecture concerning a future transaction or development with respect to the company or companies. According to the Exchange, each day's broadcast often causes an immediate and significant impact on the market price of the stock(s) identified in the report. This permits certain viewers of the televised report, utilizing high speed computers, to transmit options orders to buy or sell options covering the stock(s) in question (depending on whether the report is ''bullish'' or ''bearish'') through RAES before either the price of the stock(s) in the primary market or the prices of options governing the stock(s) in RAES have had time to adjust. The Exchange states that the result is an abuse of the RAES system, in as much as, for a short period of time, persons entering computerized options orders in RAES are able to obtain automatic executions at prices that are no longer current, simply because there has not been sufficient time to adjust prices in RAES. According to the CBOE, the ability of certain persons to ''game'' the system in this way operates to the disadvantage of CBOE market makers who are obligated under Exchange rules to take the other side of the orders.

In response to this situation, the CBOE's Market Performance Committee, which consists of floor officials who are authorized under CBOE Rule 6.6 to take such action as is deemed necessary to maintain a fair and orderly market in response to unusual market conditions, has determined that the market in options of the class or classes covering the stock that is the subject of the televised report will be declared ''fast'' for a short period of time each day, commencing at the time the analyst's report is aired, at which time RAES will be deactivated temporarily by the Exchange's control room in the affected class or classes of options. RAES will be reactivated at the post with the consent of two floor officials as soon as stock prices in the primary market and options prices in RAES have adjusted, which is likely to occur within one or two minutes following the report. CBOE members will be notified of both the deactivation of RAES in particular classes of options and its reactivation by means of (1) a message to members that will print at each post on the trading floor, and (2) a message over the Exchange's TextNet system, which has terminals at various places around the Exchange floor.

The Exchange believes that this policy will help to encourage more active market maker participation in RAES without harming the intended beneficiaries of RAES, *i.e.*, public customers who submit small orders. In addition, the CBOE notes that even for the few minutes when RAES is deactivated, the trading crowd will continue to have the responsibility to fill customer orders according to CBOE rules, including the firm quote rule.

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 after the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 26, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–24797 Filed 10–4–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36303; File No. SR–NASD–95–29]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change to the Corporate Financing Rule at Article III, Section 44 of the Rules of Fair Practice Regarding Rights of First Refusal

September 29, 1995.

I. Introduction

On June 1, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The rule change amends the Rules of Fair Practice to: (a) Reduce the duration of the right of first refusal from five years to three years; (b) limit a member to one opportunity to waive or terminate a right of first refusal in consideration of any payment or fee; (c) limit the amount of such waiver/termination payments; and (d) specify

[2] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

that compensation to members for waiving or terminating a right of first refusal must be in the form of cash.

Notice of the proposed rule change was provided by issuance of a Commission release and by publication in the Federal Register.[3] The Commission received one comment in response to the release. For the reasons discussed below, this order approves the proposed rule change.

II. Description of the Proposed Rule Change

The underwriting agreement between the issuer and its underwriter often includes a provision granting the underwriter a ''right of first refusal.'' Commonly, this provision is negotiated in connection with an issuer's initial public offering and grants, for a certain number of years, the underwriter a right to underwrite or participate in any future public offerings, private placements, or other financings by the issuer. Provided the amounts negotiated are reasonably related to the size of the subsequent offering in which the member is not participating, the NASD believes that members should be permitted to negotiate to waive or terminate a right of first refusal in the event that the issuer wishes to use a different underwriter in the subsequent offering.

Typically, rights of first refusal are associated with underwritings of small companies that lack significant operating history and, in the NASD's experience, these companies often do not comprehend fully the nature and extent of their relationship with the underwriter. The NASD, therefore, believes certain minimum limitations should be placed on the scope of rights of first refusal provisions in underwriting agreements. Specifically, the NASD proposes to: [4]

- Decrease from five years to three years the maximum duration for the effectiveness of a right of first refusal provision;
- Limit to one the number of times compensation can be received to waive or terminate a right of first refusal;
- Limit the amount of any payment to waive or terminate a right of first refusal to 1% of the original offering or 5% of the underwriting discount or commission paid in connection with the future offering; and
- Require that compensation for waiving or terminating a right of first refusal must be in the form of cash.

A. Three-Year Duration

Currently, the NASD prohibits, as unreasonable, any right of first refusal with a duration of more than five years from the effective date of the offering. The NASD proposes to decrease this period to three years. In its proposal, the NASD expressed concern about whether smaller issuers are able to evaluate fully the ramifications of agreeing to a right of first refusal with a term of five years. Further, the NASD is concerned that many of these provisions might not be negotiated freely by the issuer and the underwriter. The NASD has determined that a right of first refusal with a duration of five years is overreaching and that a three-year period is more appropriate.

B. Number of Payments for Waiver/Termination

The NASD believes that often the right of first refusal is included in the underwriting agreement without any original intent on the part of the underwriter to underwrite any subsequent offerings of securities by the issuer. Further, the NASD's experience indicates that certain underwriters routinely receive multiple ''stand-aside'' payments, often in cases where the underwriter is no longer providing any bona fide services to the issuer.[5] The NASD, therefore, proposes to limit members to one opportunity to waive or terminate a right of first refusal in consideration of any payment or fee.[6]

C. Limitation on Waiver/Termination Compensation

The NASD continues to believe that members should be permitted to negotiate to waive or terminate a right of first refusal. The NASD believes, however, that the amounts negotiated for the waiver or termination of the right should be limited to an amount that has some relation either to the original offering or to the subsequent offering in which the member is not participating. The NASD proposes, therefore, to limit the amount of such waiver/termination payments. Specifically, the NASD seeks to prohibit any payment to waive or terminate a right of first refusal that has a value in excess of the greater of 1% of the original offering (or a higher amount if additional compensation is available under the compensation guideline applicable to the original offering) or 5% of the underwriting discount or commission paid in connection with the future offering (including any overallotment option that may be exercised),[7] regardless of whether the payment or fee is negotiated at the time of or subsequent to the original public offering.[8]

D. Cash Payment Requirement

The NASD also proposes to require that compensation to members for waiving or terminating a right of first refusal must be in the form of cash. The NASD believes this provision will limit the waiver/termination payment to a percentage of the capital raised in the secondary offering and protect the company's shareholders from dilution resulting from the issuance of shares to a former underwriter.

E. Additional Clarifications

The rule change also clarifies current policy that any right of first refusal provided to the underwriter and related persons to underwrite or participate is applicable to all future ''public'' offerings and ''private placements or other financings''. Finally, the rule change clarifies current policy that all unreasonable terms and arrangements, cited under Subparagraph (v) to Section 44(6)(B), shall apply to any right of first refusal ''provided to the underwriter and related persons to underwrite and participate in'' future public offerings, private placements or other financings.

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[3] Securities Exchange Act Release No. 35961 (July 12, 1995), 60 FR 37117 (July 19, 1995).

[4] In addition, the NASD proposes certain other technical amendments to its Rules of Fair Practice concerning rights of first refusal provisions.

[5] The NASD also is concerned that multiple stand-aside payments by the issuer to a member result in difficulty for both the member and the NASD in tracking the payments received over the term of the right. Such tracking is important in order to insure compliance with the Corporate Financing Rule's compensation guidelines for the original offering. The NASD anticipates that the former underwriter will contact the NASD Corporate Financing Department when it is negotiating a waiver or termination of a right of first refusal to obtain information on whether additional compensation is available under the compensation guideline applicable to the original offering.

[6] An underwriter not wishing to terminate its right of first refusal for future offerings may, however, preserve its right by waiving its participation in a particular offering without accepting payment for such waiver.

[7] The proposed one percent limitation reflects the NASD's belief that it is appropriate that the former underwriter be permitted to negotiate a fee that is at least equal to the valuation of the right of first refusal in connection with the NASD's review of the original offering in the event that the issuer wishes to sever its relationship with the former underwriter. The five percent alternative limitation reflects the NASD's belief that the former underwriter that assumed the risk of distributing the issuer's IPO should be allowed to participate or equitably benefit from the issuer's subsequent offering of securities, including any overallotment option that may be exercised, regardless of whether the payment or fee is negotiated at the time of or subsequent to the original public offering.

[8] The NASD does not include the payment to waive or terminate a right of first refusal as compensation in connection with its review of the subsequent offering of securities. The proposed rule change does not modify this practice.

F. Effective Date of the Proposed Rule Change

The rule change will apply to filings that become effective with the Commission on or after January 1, 1996. Thus, offerings filed with the Corporate Financing Department of the NASD that have not become effective with the Commission prior to January 1, 1996 will be required to comply with the rule change, regardless of whether the Corporate Financing Department has previously issued an opinion that it has no objections to the terms and arrangements.

III. Comments

The Commission received one comment [9] in response to its publication of notice in the Federal Register. In addition, the NASD received four comments [10] in response to its solicitation of comment from its membership.[11] Generally, all the commenters opposed the proposal.

All the significant arguments raised by the commenters were summarized and responded to by the NASD in its proposal and were included in the Commission's notice of publication and solicitation of comment. Generally, commenters expressed concern that the NASD is unnecessarily interfering with the contractual relationship between the issuer and the underwriter, who are free to negotiate a termination of the right if they so desire. For example, one commenter argued that the NASD should limit its role to general review of the level of underwriting compensation and not regulation of the ''method, manner, nature, timing and other matters relat[ed] to [underwriting] compensation.'' [12]

IV. Discussion

The Commission believes that the rule change is consistent with the requirements of Section 15A of the Act and the rules and regulations thereunder applicable to the NASD and, therefore, has determined to approve the proposal. Section 15A requires that the rules of the NASD, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[13]

The Commission believes this proposal strikes an appropriate balance by allowing underwriters and issuers to continue to negotiate compensation agreements tailored to the needs of the parties while protecting issuers and investors from excessive and unfair payment arrangement under these agreements. The Commission agrees that issuers and underwriters should be allowed to enter into compensation arrangements which include compensation for terminating a right of first refusal. The Commission believes, however, that the NASD's proposal to place certain limits on the terms of these provisions will further the protection of issuers and investors and, thus, the public interest.

V. Conclusion

For the reasons discussed, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD, in a particular, Section 15A(b)(6).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–95–29 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–24796 Filed 10–4–95; 8:45 am]

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[9] Letter from Perry L. Taylor, Jr., Chairman, Capital Markets Committee, Securities Industry Association, to Jonathan G. Katz, Secretary, SEC (Aug. 29, 1995).

[10] Letters from Stuart N. Kingoff, Associate Corporate Counsel, Lew Lieberbaum and Co., Inc. (Nov. 18, 1994); Lawrence B. Fisher, Kelley Drye and Warren (Nov. 30, 1994); and Bachner, Tally, Polevoy and Misher (Nov. 30, 1994), to Joan C. Conley, Secretary, NASD, and letter from Richard P. Woltman, President, Spelman & Co., Inc., to Jonathan G. Katz, Secretary, SEC (Nov. 16, 1994).

[11] NASD Notice to Members 94–82 (Oct. 1994).

[12] Letter from Perry L. Taylor, Jr., Chairman, Capital Markets Committee, Securities Industry Association, to Jonathan G. Katz, Secretary, SEC (Aug. 29, 1995).

[13] 15 U.S.C. 78*o*–3(b)(6) (1988).

[14] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36296; File No. SR–NASD–95–37]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments No. 1, 2 and 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Listing and Trading of Broad-Based Index Warrants on The Nasdaq Stock Market

September 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 28, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD filed Amendment No. 1 (''Amendment No. 1'') to the proposed rule change on September 22, 1995.[1] on September 27, 1995, the NASD filed Amendment No. 2 (''Amendment No. 2'') to the proposal.[2] On September 28, 1995, the NASD filed Amendment No. 3 (''Amendment No. 3'') to the proposal.[3] This Order approves the proposed rule change, as amended, on an accelerated basis and also solicits comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing several changes to its rules to accommodate the trading of the index warrants based on broad-based indexes on The Nasdaq Stock Market (''Nasdaq''). The proposed changes augment and enhance the Association's regulatory requirements applicable to index warrants which were previously approved by the Commission in June 1992.[4] In addition, unlike the current regulatory structure for index warrants whereby the Commission separately approves each type of index warrant for trading (*i.e.*, Hong Kong Index warrants or Nikkei Index warrants), the proposed changes streamline the approval process for index warrants by providing that an index is eligible to underlie an index warrant traded through the facilities of the Nasdaq system once the Commission has approved such index to underlie an index warrant or option.

Specifically, the NASD proposes the following rule amendments. First, Section 2(c)(2) of Part III of Schedule D

[1] Letter from Joan C. Conley, Corporate Secretary, NASD, to Michael Walinskas, SEC, dated September 22, 1995. Amendment No. 1, which is superseded, in part, by Amendment No. 2, raises position limits on the Russell 2000 Index and S&P MidCap 400 Index (''MidCap Index''). It also establishes that Section 13, Liquidation of Positions, will apply to short sales in warrants.

[2] Letter from T. Grant Callery, Vice President and General Counsel, NASD, to Michael Walinskas, SEC, dated September 27, 1995. Amendment No. 2 reduces the position limits on the MidCap Index to 7.5 million warrants.

[3] Letter from Joan C. Conley, Corporate Secretary, NASD, to Michael Walinskas, SEC, dated September 28, 1995. Amendment No. 3 clarifies the settlement methodology to be utilized for index warrants.

[4] *See* Securities Exchange Act Release No. 30773 (June 3, 1992), 57 FR 24835 (June 11, 1992) (''Index Warrant Approval Order'').

to the NASD's By-Laws is revised to add new listing standards applicable to the issuers of index warrants. Previously, issuers of index warrants were required to have assets in excess of $100 million. Under the revised standards:

(1) issuers would be required to have a minimum tangible net worth in excess of $250 million or, in the alternative, have a minimum tangible net worth in excess of $150 million, provided the issuer has not issued warrants such that the aggregate original issue price of all of the issuer's stock index, currency index, and currency warrant offerings (combined with offerings by its affiliates) listed on Nasdaq or a national securities exchange exceeds 25% of the issuer's net worth;

(2) the term of the index warrants must provide that unexercised in-the-money warrants will be automatically exercised on either the delisting date (if the issue is not listed on a national securities exchange) or upon expiration;

(3) for warrant offerings where U.S. stocks constitute 25 percent or more of the index value, issuers must use the opening prices (''a.m. settlement'') of the U.S. stocks to determine the index warrant settlement value for expiring warrants on the final determination of settlement value date (''valuation date'') as well as during the two business days immediately preceding valuation date [5];

(4) in instances where the stock index underlying a warrant is comprised in whole or in part with securities traded outside the United States, the foreign country securities or American Depositary Receipts (''ADRs'') thereon that (i) are not subject to a comprehensive surveillance agreement, and (ii) have less than 50% of their global trading volume in dollar value within the U.S., shall not, in the aggregate, represent-more than 20% of the weight of the index, unless such index is otherwise approved for warrant or option trading; and

(5) to assist in the surveillance of index warrant trading, as a condition of listing on Nasdaq, issuers would be required to notify the NASD of any early warrant exercises by 4:30 p.m., Eastern Standard Time, on the day the settlement value for the warrants is determined.

Second, the proposal adds a new Schedule J to the NASD's By-Laws. This schedule consolidates all of the regulatory requirements applicable to the conduct of accounts, the execution of transactions, and the handling of orders in index warrants listed on Nasdaq and exchange-listed stock index warrants, currency index warrants, and currency warrants by members who are not members of the exchange on which the warrant is listed or traded. In particular, Schedule J provides that: (1) All customer accounts trading index warrants, currency index warrants, and currency warrants must be approved to trade options; [6] (2) the options suitability rule applies to all recommendations to customers involving the purchase or sale of index warrants, currency index warrants, and currency warrants; and (3) the options rules contained in Article III, Section 33(b) of the NASD's Rules of Fair Practice regarding discretionary accounts, the supervision of accounts, customer complaints are applicable to index warrants, currency index warrants, and currency warrants. In addition, Schedule J provides that the NASD's rules governing options communications with the public shall apply to communications with the public concerning index, currency, and currency index warrants. To assist NASD members in complying with the regulatory requirements applicable to index warrants, currency index warrants, and currency warrants, the NASD proposes to distribute a Notice-to-Members providing guidance regarding member firm compliance responsibilities when handling transactions in warrants.

In addition, Schedule J provides for position limits, exercise limits, and reporting requirements applicable to index warrants. The position limits are consolidated position limits, meaning that index warrants on the same index on the same side of the market must be aggregated for position limit purposes. Specifically, for index warrants other than index warrants based on the MidCap Index, the position limit is 15 million warrants, provided the initial offering price of the warrants was at or below $10. For index warrants based on the MidCap Index, the position limit is 7.5 million warrants, provided the initial offering price of the warrants was at or below $10.[7] The proposal also contains a provision that equalizes positions in index warrants that initially were priced above $10 with those that were priced at or below $10. In particular, positions will be equalized by dividing the original issue price of the index warrants priced above $10 by ten and multiplying this number by the size of the index warrant position. For example, if an investor held 100,000 Nasdaq 100 Index warrants priced initially at $20, the size of this position for position limit purposes would be 200,000, or 100,000 times 20 divided by 10.

The exercise limits provide that no investor or group of investors acting in concert may, within five consecutive business days, exercise more index warrants on the same index on the same side of the market than the applicable index warrant position limit. The reporting requirements provide that positions of 100,000 or more index warrants on the same index on the same side of the market must be reported to the Association. Schedule J also contains provisions setting forth the NASD's authority to mandate the liquidation of index warrant positions in excess of applicable position limits.[8] In addition, proposed Schedule J provides that the NASD may halt or suspend trading in an index warrant if it concludes that such action is appropriate in the interests of a fair and orderly market and the protection of investors.[9]

Third, the NASD proposes to add a new Section 3(f)(10) to Article III, Section 30 of the NASD Rules of Fair Practice governing the margin treatment for index warrants, currency index warrants, and currency warrants. Specifically, these new requirements, provide that the initial and maintenance requirements for long positions in index warrants shall be 100% of the full purchase price of the warrants. For short positions in index warrants, the margin requirement is 100% of the current market value of the warrant plus 15% of the current value of the underlying index. The margin requirements for short positions can be decreased to the extent that they are out-of-the-money, however, the minimum requirement for each such warrant shall not be less than the current value of the warrant plus 10% of the current index value.

[5] *See* Amendment No. 3.

[6] In this connection, the NASD will permit NASD members to accept the representation of an investment adviser registered under the Investment Advisers Act of 1940 concerning the eligibility status of certain customers to engage in warrant trading even if the underlying documentation relating to the managed account is not provided to the member. The NASD's position would apply to the managed accounts of an institutional customer or where the investment adviser account represents the collective investment of a number of persons (*e.g.*, an investment club account). Permitting member firms to accept the representation of an investment adviser in these instances will conform the handling of warrant accounts to the current practice for options accounts.

[7] *See* Amendment No. 2.

[8] *See* Amendment No. 1.

[9] Among the factors that may be considered by the NASD are the following: (1) Trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the index value; (2) the current calculation of the index derived from the current market prices of the stocks is not available; and (3) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Short sales of currency warrants will follow the margin requirements currently applicable to standardized currency options. Specifically, the NASD proposes that short sales of warrants on the German Mark, French Franc, Swiss Franc, Japanese Yen, British Pound, Australian Dollar and European Currency Unit shall each be subject to a margin level of 100 percent of the current market value of each such warrant plus a four percent ''add-on.'' [10] The required margin can be decreased to the extent that the warrant is out-of-the-money, however, the minimum requirement for each such warrant must not be less than the current value of the warrant plus .75% (.0075) of the value of the underlying currency (or such other percentage as specified by the national securities exchange listing the warrant and approved by the Commission). The margin required on currency index warrants would be an amount as determined by the national securities exchange listing the warrant and approved by the Commission.

The NASD also proposes that its index warrant, currency index warrant, and currency warrant margin requirements be permitted offset treatment for spread and straddle positions. In this regard, the NASD proposes that index, currency, and currency index warrants may be offset with either warrants or OCC-issued options on the same index, currency, or currency index, respectively, in the same manner that standardized index and currency options may be offset with other standardized index and currency options. The proposed rules governing the margin treatment for spreads and straddles involving index, currency, and currency index warrants are proposed to be implemented on a one-year pilot basis. The NASD also proposes to allow market participants to use escrow receipts to cover a short call position in broad-based stock index warrants. Specifically, no margin is required for a short position in an index call warrant where the customer promptly delivers an escrow receipt, issued by a bank or trust company, certifying that the issuer holds for the account of the customer (1) cash, (2) cash equivalents, (3) one or more qualified equity securities, or (4) a combination thereof.

Fourth, the proposal makes two minor amendments to the NASD's rules that serve to clarify the Association's rules regarding index warrants. First, Section 19 of Part I of Schedule D to the NASD's By-Laws is amended to clarify that the term Nasdaq National Market System security includes all index warrants traded through Nasdaq. Second, the proposal replaces language currently contained in a policy of the NASD's Board of Governors issued under Article III, Section 2 of the Rule of Fair Practice with a cross-reference to new Schedule J. This change is made to eliminate duplicative and potentially confusing language in the NASD's rules. The text of the proposed rule change is available at the Office of the Secretary of the NASD and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the purposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is submitting this proposed rule change to enhance the NASD's regulatory scheme governing index warrants to ensure that, among other things, investors in index warrants traded on Nasdaq are adequately protected and that the trading of index warrants on Nasdaq does not have any adverse market impacts.[11] To this end, the NASD has developed a new Schedule J to its By-Laws that consolidates all of the relevant rules, regulations, practices and procedures applicable to index warrants trading on Nasdaq and exchange-listed stock index warrants, currency index warrants, and currency warrants traded by members who are not members of the exchange on which the warrant is listed or traded. The NASD also proposes to impose more stringent standards on the issuers of index warrants, as well as certain requirements as to the terms of the index warrants themselves. Under the proposal, all exchange-traded index warrants and foreign currency warrants presently outstanding will be grandfathered from these provisions. Even though there currently are no index warrants listed on Nasdaq, NASD rules provide that issuers of Nasdaq-listed index warrants are required to have assets in excess of $100 million and members are obligated to comply with the NASD's options rules governing suitability, account opening, discretionary accounts, and account supervision when handling customer orders in index warrants. The NASD's current proposal expands these requirements in the following ways.

First, because index warrants are derivative in nature and closely resemble index options, the NASD believes it is appropriate to apply to index warrants, currency index warrants, and currency warrants the same or similar safeguards for customer protection that are applicable to exchange-traded standardized options. Accordingly, Schedule J is patterned after the NASD's options rules contained in Article III, Section 33 of the NASD's Rules of Fair Practice. In particular, proposed Sections 3 through 9 of Schedule J impose on index warrants, currency index warrants, and currency warrants the options rules governing account opening, suitability, discretionary accounts, supervision of accounts, customer complaints and communications with the public and customers. These provisions will ensure that members are adequately monitoring their customer accounts trading index, currency, and currency index warrants and that only customers with an understanding of these warrants and the financial capacity to bear the risks attendant thereto will be permitted to trade these instruments based on their broker's recommendation. In addition, as discussed above, the proposed margin rules for index, currency, and currency index warrants are comparable to those applicable to standardized index and currency options. Accordingly, the NASD believes that the special concerns attendant to the secondary trading of index warrants on Nasdaq have been adequately addressed by the NASD.

Second, the NASD proposes to increase the listing standards applicable to issuers of index warrants to ensure that only substantial companies capable of meeting their warrant obligations are able to list index warrants on Nasdaq. In particular, by switching from a $100

[10] Warrants on the Canadian Dollar would be subject to a one percent ''add-on.'' The ''add-on'' required on any other foreign currency would be such other percentage as specified by the national securities exchange listing the warrant and approved by the Commission on a case-by-case basis.

[11] Due to the current definition of ''security'' in Section 3(a)(10) of the Act, 15 U.S.C. 78c(a)(10), the NASD, unlike the national securities exchanges, does not have authority to list issuances of currency and currency index warrants on Nasdaq. The NASD is proposing rules, however, that will apply to transactions in currency and currency index warrants entered into by NASD members (or customers thereof) who are not members of the exchange on which the currency or currency index warrant is listed or traded.

million gross assets standard to a standard where issuers will be required to have a minimum tangible net worth in excess of $250 million or, in the alternative, have a minimum tangible net worth in excess of $150 million, provided the issuer has not issued warrants such that the aggregate original issue price of all of the issuer's stock index, currency index, and currency warrant offerings (combined with offerings by its affiliates) listed on Nasdaq or a national securities exchange exceeds 25% of the issuer's net worth, the NASD believes that issuers will be better able to satisfy their warrant obligations.

Third, the NASD proposes to implement several safeguards designed to ameliorate any potential adverse market impacts resulting from the trading of index warrants. Specifically, the listing standards provide that only broad-based indexes can underlie index warrants traded through the facilities of the Nasdaq system. Sections 10 and 11 of Schedule J provide for consolidated position and exercise limits for index warrants on the same index on the same side of the market and Section 12 imposes a reporting requirement for positions of 100,000 warrants on the same index on the same side of the market. In addition, the listing standards provide that the settlement values for stock index warrants overlying indexes with U.S. components greater than 25 percent of the value of the index must be determined with reference to the opening prices of the U.S. securities in such indexes on valuation date as well as during the two business days immediately preceding valuation date.[12] The NASD's proposal also provides for the notification to the NASD of early exercises of stock index warrants and disclosure of certain trading activities by issuers in response to such early exercises.

The proposal also imposes requirements with respect to the percentage weighting of a multi-country or foreign stock index that must be subject to an effective surveillance sharing arrangement and establishes procedures governing the halting or suspension of trading in an index warrant. The NASD believes that these requirements will facilitate the orderly unwinding of index warrant positions and related cash market positions upon the expiration of index warrants and enhance the ability of the NASD to surveil trading in index warrants and related markets.

Lastly, the NASD proposes to add Section 2(c)(2)(K) of Part III to Schedule D of the NASD's By-Laws that will streamline the approval process for index warrants. This section provides that once a broad-based index has been approved by the SEC to underlie an index warrant or option, the index is then eligible to underlie an index warrant traded on Nasdaq without further Commission review or approval, provided the NASD has obtained all the surveillance sharing agreements mandated by the Commission. The NASD believes that this self-effectuating listing process for index warrants will promote market efficiency and allow the NASD to better meet the demands of investors in the Nasdaq marketplace. At the same time, the NASD does not believe that this approval process will compromise the protection of investors in any way because the Commission will already have approved the underlying index to underlie an index option or warrant.

Accordingly, the NASD believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Listing index warrants on Nasdaq will also facilitate members and investors desiring to trade index warrants in a dealer environment. In addition, the sales practice, margin, and position and exercise limit rules, among others, that will be applicable to index, currency, and currency index warrants will serve to protect investors and promote the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the proposed rule change given accelerated effectiveness pursuant to Section 19(b)(2) of the Act in view of the Commission's previous approval of substantially identical rule changes submitted by the other SROs.[13] These other proposals were subject to the full notice and comment period and, in fact, were modified partly in response to a comment letter received on the proposals on behalf of several large broker-dealers.[14] The NASD also notes that the Commission has approved amendments to every other SRO's stock index warrant proposal on an accelerated basis. In addition, the NASD notes that a number of issuers, including Nasdaq listed companies, have expressed an interest in listing index warrants on Nasdaq.

Accordingly, because the NASD's proposed regulatory structure for index warrants mirrors standards already approved by the Commission for other SROs, the NASD believes no regulatory purpose would be served by delaying the ability of Nasdaq to list index warrants. Similarly, the NASD believes that investors in The Nasdaq Stock Market should be afforded the opportunity to trade index warrants. Therefore, the NASD believes that failure to grant accelerated effectiveness of the proposed rule change would result in an unfair burden on competition and regulatory confusion in that the margin and sales practice rules applicable to index and currency warrants will not be uniform among U.S. securities markets. In fact, absent accelerated approval, customers of NASD members who are not members of an exchange will be subject to one regulatory regime for warrants while customers of members who are exchange members will be subject to another regime.

[12] *See* Amendment No. 3.

[13] On August 29, 1995, the Commission approved uniform listing and trading guidelines for stock index, currency and currency index warrants for the New York Stock Exchange, Pacific Stock Exchange, Philadelphia Stock Exchange, American Stock Exchange and Chicago Board Options Exchange. *See* Securities Exchange Act Release Nos. 36165, 36166, 36167, 36168 and 36169 (Aug. 29, 1995), respectively.

[14] *See* Letter from Paul M. Gottlieb, Seward & Kissel, to Jonathan G. Katz, Secretary, Commission, dated January 10, 1995 (''Comment Letter'' or ''Seward & Kissel Letter''). The Seward & Kissel Letter was submitted on behalf of PaineWebber Inc., Bear, Stearns & Co. Inc., Lehman Brothers Inc., Smith Barney Inc., Salomon Brothers Inc., Morgan Stanley & Co. Inc., and Hambrecht & Quist Inc.

IV. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 15A(b)(6).[15] Specifically, the Commission finds that the NASD's proposal to establish uniform listing standards for broad-based stock index warrants, as well as standards applicable to the trading of stock index, currency and currency index warrants by NASD members (or customers thereof) who are not members of the exchange on which the warrant is listed or traded, strikes a reasonable balance between the Commission's mandates under Section 15A(b)(6) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. In addition, the NASD's proposed listing standards for warrants are consistent with the Section 15A(b)(6) requirements that rules of a registered securities association be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and are not designed to permit unfair discrimination among issuers.

The NASD's proposed generic listing standards for broadbased stock index warrants set forth a regulatory framework for the listing of such products.[16] Generally, lifting standards serve as a means for an exchange or securities association to screen issuers and to provide listed status only to *bona fide* issuances that will have sufficient public float, investor base, and trading interest to ensure that the market has the depth and liquidity necessary to maintain fair and orderly markets. Adequate standards are especially important for warrant issuances given the leveraged and contingent liability they represent. Once a security has been approved for initial listing, maintenance criteria allow an exchange or securities association to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's or securities association's standards for market depth and liquidity so that fair and orderly markets can be maintained.

In reviewing listing standards for derivative-based products, the Commission also must ensure that the regulatory requirements provide for adequate trading rules, sales practice requirements, margin requirements, position and exercise limits and surveillance procedures. These rules minimize the potential for manipulation and help to ensure that derivatively-priced products will not have negative market impact. In addition, these standards should address the special risks to customers arising from the derivative products.[17] For the reasons discussed below, the Commission believes the NASD's proposal will provide it with significant flexibility to list stock index warrants on NASDAQ, without compromising the effectiveness of the NASD's listing standards or regulatory program for such products.[18]

A. Issuer Listing Standards and Product Design

As a general matter, the Commission believes that the trading of warrants on a stock index permits investors to participate in the price movements of the underlying securities, and allows investors holding positions in some or all of such securities to hedge the risks associated with their portfolios. The Commission further believes that trading warrants on a stock index provides investors with an important trading and hedging mechanism that is designed to reflect accurately the overall movement of the component securities.

Warrants, unlike standardized options, however, do not have a clearing house guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that an exerciser of warrants may not be able to receive full cash settlement upon exercise. This additional credit risk, to some extent, is reduced by the NASD's proposed issuer listing standards that require an issuer to have either: (a) a minimum tangible net worth of $250 million; or (b) a minimum tangible net worth of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such stock index, currency and currency index warrant offerings (or affiliates) that are listed on a national securities exchange or traded through the facilities of NASDAQ is in excess of 25% of the warrant issuer's net worth. Furthermore, financial information regarding the issuers of warrants will be disclosed or incorporated in the prospectus accompanying the offering of the warrants.

The NASD's proposal will provide issuers flexibility by allowing them to utilize either a.m. or p.m. settlement, provided, however, domestic index warrants (*i.e.*, warrants based on indexes for which 25% or more of the index value is represented by securities traded primarily in the U.S.) (''domestic index warrants'') are required to utilize a.m. settlement of expiring warrants on valuation date (''valuation date'') as well as during the last two business days prior to valuation date. The Commission continues to believe that a.m. settlement significantly improves the ability of the market to alleviate and accommodate large and potentially destabilizing order imbalances associated with the unwinding of index-related positions. Nevertheless, the use of p.m. settlement except on valuation date, and during the last two business days prior to the valuation date, strikes a reasonable balance between ameliorating the price effects associated with expirations of derivative index products and providing issuers with flexibility in designating their products.[19]

In this context, the Commission notes that unlike standardized index options whose settlement times are relatively uniform, index warrants are issuer-based products, whose terms are individually set by the issuer. In addition, while options may have unlimited open interest, the number of warrants on a given index is fixed at the time of issuance. Accordingly, it is not certain that there will be a significant number or warrants in indexes with similar components expiring on the same day. This may reduce the pressure from liquidation of warrant hedges at settlement. Nevertheless, the Commission expects the NASD to monitor this issue and, should significant market effects occur as a result of early exercises from p.m. settled index warrants, would expect it

[15] 15 U.S.C. 78o–3(b)(6) (1988).

[16] The Commission notes that warrants issued prior to this approval order will continue to be governed by the rules applicable to them at the time of their listing.

[17] Pursuant to Section 6(b)(5) of the Act, the Commission is required to find, among other things, that trading in warrants will serve to protect investors and contribute to the maintenance of fair and orderly markets. In this regard, the Commission must predicate approval of any new derivative product upon a finding that the introduction of such derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. As discussed below, the Commission believes warrants will serve an economic purpose by providing an alternative product that will allow investors to participate in the price movements of the underlying securities in addition to allowing investors holding positions in some or all of such securities to hedge the risks associated with their portfolios.

[18] *See supra* note 11.

[19] Foreign stock market based index warrants may utilize p.m. settlement throughout their duration.

to make appropriate changes including potentially limiting the number of index warrants with p.m. settlement.

B. Customer Protection

Due to their derivative and leveraged nature, and the fact that they are a wasting asset, many of the risks of trading in warrants are similar to the risks of trading standardized options. Accordingly, the NASD has proposed to apply its options customer protection rules to warrants. In particular, the Commission notes that warrants may only be sold to options approved accounts capable of evaluating and bearing the risks associated with trading in these instruments, and that adequate disclosure of the risks of these products must be made to investors.[20] In addition, the NASD will apply the options rules for suitability, discretionary accounts, supervision of accounts and customer complaints to transactions in warrants. By imposing the special suitability and disclosure requirements noted above, the Commission believes the NASD has addressed adequately several of the potential customer protection concerns that could arise from the options-like nature of warrants.

The ODD, which all options approved accounts must receive, generally explains the characteristics and risks of standardized options products. Although many of the risks to the holder of an index warrant and option are substantially similar, however, because warrants are issuer-based products, some of the risks, such as the lack of a clearinghouse guarantee and certain terms for index warrants, are different. The NASD has adequately addressed this issue by proposing to distribute a circular to its members that will call attention to the specific risks associated with stock index warrants that should be highlighted to potential investors. In addition, the issuer listing guidelines described above will ensure that only substantial companies capable of meeting their warrant obligations will be eligible to issue warrants. These requirements will help to address, to a certain extent, the lack of a clearinghouse guarantee for index warrants. Finally, warrant purchasers will receive a prospectus during the prospectus delivery period, which should ensure that certain information about the participating issuance and issuer is publicly available. The Commission believes that the combined approach of making available general derivative product information (the ODD), product specific information (the NASD circular), and issuer specific information (the prospectus) should provide an effective disclosure mechanism for these products.

C. Surveillance

In evaluating proposed rule changes to list derivative instruments, the Commission considers the degree to which the market listing the derivative product has the ability to conduct adequate surveillance. In this regard, the Commission notes that the NASD has developed adequate surveillance procedures for the trading of index and currency warrants. First, the NASD has developed enhanced surveillance procedures to apply to domestic stock index warrants which the Commission believes are adequate to surveil for manipulation and other abuses involving the warrant market and component securities.[21] Among these enhanced surveillance procedures, the Commission notes that issuers will be required to report to the NASD on settlement date the number and value of domestic index warrants subject to early exercise the previous day. The Commission believes that this information will aid the NASD in its surveillance capacity and help it to detect and deter market manipulation and other trading abuses.

Second, the NASD has developed adequate surveillance procedures to apply to foreign stock index warrants (*i.e.*, less than 25% of the index value is derived from stocks traded primarily in the U.S.).[22] The Commission believes that the ability to obtain information regarding trading in the stocks underlying an index warrant is important to detect and deter market manipulation and other trading abuses. Accordingly, the Commission generally requires that there be a surveillance sharing agreement[23] in place between an exchange listing or trading a derivative product and the exchange(s) trading the stocks underlying the derivative contract that specifically enables the relevant markets to surveil trading in the derivative product and its underlying stocks.[24] Such agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur.[25] In this regard, the NASD will require that no more than 20% of an Index's weight may be comprised (upon issuance and thereafter) of foreign securities (or ADRs thereon) that do not satisfy one of the following tests: (1) The NASD has in place an effective surveillance agreement[26] with the primary exchange in the home country in which the security underlying the ADR is traded; or (2) meets an existing alternative standard available for standardized options trading (*e.g.*, satisfy the 50% U.S. trading volume test).[27] The Commission believes that this standard will ensure that index warrants are not listed upon foreign indexes whose underlying securities trade on exchanges with whom the NASD has no surveillance sharing agreement.

D. Market Impact

The Commission believes that the listing and trading of index warrants will not adversely affect the U.S. securities markets. First, with respect to index warrants, the Commission notes that warrants may only be established upon indexes the Commission has previously approved as broad-based in the context of index options or warrant

[20] Pursuant to Article III, Section 33(b)(16) of the Rules of Fair Practice, all options approved accounts must receive an ODD, which discusses the characteristics and risks of standardized options.

[21] In addition, the Commission notes that issuers will be required to report to the NASD certain trades (as specified in the NASD's surveillance procedures) to unwind a warrant hedge that are effected as a result of the early exercise of domestic index warrants. This will enable the NASD to monitor the unwinding activity to determine if it was effected in a manner that violates NASD or Commission rules.

[22] Each prior issuance of a foreign stock market based index warrant is subject to specific surveillance procedures. These procedures are generally tailored to the individual warrant issuance and are based upon several factors involving the primary foreign market, including the existence of surveillance or information sharing agreements.

[23] The Commission believes that a surveillance sharing agreement should provide the parties with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a surveillance sharing agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity, and the identity of the purchasers for securities. *See e.g.*, Securities Exchange Act Release No. 31529 (Nov. 27, 1992).

[24] The ability to obtain relevant surveillance information, including, among other things, the identity of the purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

[25] In the context of domestic index warrants, the Commission notes that the U.S. exchanges and the NASD are members of the Intermarket Surveillance Group ("ISG"), which was formed to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all the amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the ISG Agreement.

[26] *See supra* note 23.

[27] *See* Securities Exchange Act Release Nos. 31529, 57 FR 57248 (Dec. 3, 1992) and 33555, 59 FR 5619 (Feb. 7, 1994).

trading. As part of its review of a proposal to list an index derivative product, the Commission must find that the trading of index options or warrants will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets. Accordingly, the Commission does not believe that the issuance of index warrants upon previously approved broad-based stock indexes will adversely impact the underlying component securities. In addition, because index warrants are issued by various individual issuers who set their own terms, it is likely that expirations among similar index products will be varied, thereby reducing the likelihood that unwinding hedge activities would adversely affect the underlying cash market. Finally, as discussed above, the Commission believes the NASD's enhanced surveillance procedures applicable to stock index warrants are adequate to surveil for manipulation and other abuses involving the warrant market, component securities and issuer hedge unwinding transactions.

Second, the NASD has proposed margin levels for stock index and currency warrants equivalent to those in place for stock index and currency options. The Commission believes these requirements will provide adequate customer margin levels sufficient to account for the potential volatility of these products. In addition, options margin treatment is appropriate given the options-like market risk posed by warrants. The Commission notes that the customer spread margin treatment applicable to warrants is subject to a one year pilot program. This will allow the NASD to analyze the pricing relationships between listed options and warrants on the same index in order to determine whether to revise or approve on a permanent basis the proposed spread margin rules.[28]

Third, the NASD has established reasonable position and exercise limits for stock index warrants, which will serve to minimize potential manipulation and other market impact concerns.

V. Conclusion

The Commission believes that the adoption of these uniform listing and trading standards for broad-based index warrants will provide an appropriate regulatory framework.[29] These standards will also benefit the NASD by providing them with greater flexibility in structuring warrant issuances and a more expedient process for listing warrants without further Commission review pursuant to Section 19(b) of the Act. As noted above, additional Commission review of specific warrant issuances will generally only be required for warrants overlying any non-approved broad-based index that has not been previously approved by the Commission for warrant or options trading. If Commission review of a particular warrant issuance is required, the Commission expects that, to the extent that the warrant issuance complies with the uniform criteria adopted herein, its review should generally be limited to issues concerning the newly proposed index. This should help ensure that such additional Commission review could be completed in a prompt manner without causing any unnecessary delay in listing new warrant products.

Finally, the Commission finds good cause for approving the proposed rule change and Amendments No. 1, 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register in order to allow the NASD to begin listing index warrants without delay. As discussed above, the proposal is substantially identical to those submitted by the other SROs.[30] These other index warrant proposals were subject to the full notice and comment period and, as discussed above, were modified in response to the Seward & Kissell Letter. Furthermore, Amendment No. 1 to the proposal ensures that NASD members do not accept and/or execute an order to sell short any index warrants from any person that is the subject of an NASD order to liquidate a position in excess of applicable position limits. The Commission notes that this change also comports with rules currently in effect at other SROs applicable to the liquidation of index warrant positions in excess of applicable position limit rules. Amendment No. 2 to the proposal reduces the position limits on the MidCap Index to 7.5 million warrants. The Commission notes that this number is consistent with the level approved for the American Stock Exchange. Accordingly, the amendment does not raise any new or unique regulatory issues. Finally, Amendment No. 3 clarifies that opening price settlement will be utilized for warrants that are valued on valuation date or on either of the two business days preceding valuation date. The Commission notes that this change brings the NASD's proposal into conformity with those of the other exchanges and, therefore, does not believe the amendment raises any new or unique regulatory issues. For these reasons, the Commission believes it is consistent with Sections 15A(b)(6)[31] and 19(b)(2)[32] of the Act to approve the proposed rule change and Amendments No. 1, 2 and 3 to the proposal on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 26, 1995.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–NASD–95–37) is approved, as amended, with the portion of the rule change relating to spread margin treatment being approved on a one year pilot program basis, effective beginning September 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

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[28] The Commission notes that the margin levels for currency index warrants will be set at a level determined by the NASD and approved by the SEC. Issuances of warrants listed prior to the approval of this order will continue to apply the margin level applicable to them at the time of their listing.

[29] As noted above, the NASD does not have the authority to list currency or currency index warrant issuances. *See supra* note 11. Nevertheless, the regulatory framework adopted herein as also applicable to stock index, currency and currency index warrants which are traded by NASD members (or customers thereof) who are not members of the exchange on which the warrant is listed or traded.

[30] *See supra* note 13.

[31] 15 U.S.C. § 78o–3(b)(6) (1988).

[32] 15 U.S.C. § 78s(b)(2) (1988).

[33] 15 U.S.C. § 78s(b)(2) (1988).

[34] 17 CFR § 200.30–3(a)(12) (1994).

Jonathan G. Katz,
Secretary.
[FR Doc. 95–24794 Filed 10–4–95; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–36292; File No. SR–NASD–95–43]

Self-Regulatory Organizations; Notice and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Interim Extension of the OTC Bulletin Board® Service Through June 30, 1996

September 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 28, 1995 the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items 1, and II, below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD, through a subsidiary corporation, initiated operation of the OTC Bulletin Board Service (''OTCBB Service'' or ''Service'') in accord with the Commission approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are not listed on The Nasdaq Stock Market℠ nor on a registered national securities exchange (collectively referred to as ''OTC Equities'').[2] Essentially, the Service supports NASD members' market making in OTC Equities through authorized Nasdaq Workstation® units. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now carry OTCBB Service data. The Service is currently operating under an interim approval that expires on September 28, 1995.[3]

The NASD hereby files this proposed rule change, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, to obtain authorization for an interim extension of the Service through June 30, 1996. During this interval, there will be no material change in the OTCBB Service's operational features, absent Commission approval of a corresponding Rule 19b–4 filing.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR–NASD–92–7) that requested permanent approval of the Service.[4] For the month ending August, 1995, the Service reflected the market making positions of 382 NASD member firms displaying quotations/indications of interest in approximately 5,344 OTC Equities.

During the proposed extension, unregistered foreign securities and American Depository Receipts (collectively, ''Foreign Equity Securities'') will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the Service for unregistered Foreign Equity Securities will remain indicative. During the period of the extension, the NASD may allow member firms to publish such priced bids/offers on any Foreign Equity Security that otherwise qualifies for inclusion in the OTCBB service.

In conjunction with the launch of the Service in 1990, the NASD implemented a filing requirement (under Section 4 of Schedule H to the NASD By-Laws) and review procedures to verify member firms' compliance with Rule 15c2–11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's self-regulatory oversight of broker-dealers' market making in OTC Equities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service to fulfill the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (''Reform Act''), particularly Section 17B of the Act.[5] The NASD notes that implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for ''penny stocks''.

* * * * *

The NASD believes that this proposed rule change is consistent with Sections 11A(a)(1), 15A(b)(6) and (11), and 17B of the Act. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, among other things, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading

[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124.

[2] With the Commission's approval of File No. SR–NASD–93–24, the universe of securities eligible for quotation in the OTCBB now includes certain equities listed on regional stock exchanges that do not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape Association.

[3] Securities Exchange Act Release No. 35918 (June 29, 1995), 60 FR 35443, (July 7, 1995).

[4] Securities Exchange Act Release No. 30766 (June 1, 1992), 57 FR 24281.

[5] On November 24, 1992, the NASD filed an application with the Commission for interim designation of the Service as an automated quotation system for penny stocks, pursuant to Section 17B(b) of the Act. On December 30, 1992, the Commission granted Qualifying Electronic Quotation System (''QEQS'') status for the Service for purposes of certain penny stock rules that became effective on January 1, 1993. On August 26, 1993, the Commission granted the NASD's request for an extension of QEQS status until such time as the OTCBB meets the statutory requirements of Section 17B(b)(2).

quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, Section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD believes that extension of the Service through June 30, 1996 is fully consistent with the foregoing provisions of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the Federal Register to avoid any interruption of the Service. The current authorization for the Service extends through September 28, 1995. Hence, it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 5,344 OTC Equities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the transactional data now reported by member firms pursuant to Part XII of Schedule D to the NASD By-Laws.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–95–43 and should be submitted by October 26, 1995.

V. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder, and in particular with the requirements of Section 15A(b)(11) of the Act, which provides that the rules of the NASD relating to quotations must be designated to produce fair and informative quotations, prevent fictitious or misleading quotations and promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in OTC Equities and that facilitates price discovery and the execution of customers' orders at best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of trading in OTC Equities that are quoted in the Service, including certain non-Tape B securities that are listed on regional exchanges and quoted in the Service.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an interim period through June 30, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–24792 Filed 10–4–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36293; File No. SR–PSE–95–20]

Self-Regulatory Organizations; Pacific Stock Exchange Incorporated; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Extension of the Lead Market Maker Pilot Program

September 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 25, 1995, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the PSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Commentary .01 to PSE Rule 6.82, ''Lead Market Maker Pilot Program,'' states that the PSE's Lead Market Maker (''LMM'') system pilot program will expire on September 30, 1995. The PSE proposes to amend Commentary .01 to extend the Exchange's LMM system pilot program through September 30, 1996.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PSE has prepared summaries, set forth in Sections (A), (B),

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 17, 1990, the Commission approved the Exchange's LMM System on a pilot program basis.[2] Since that time, the Commission has approved extensions to the pilot program.[3] The pilot program is currently set to expire on September 30, 1995.

In its filing with the Commission, the Exchange included a pilot program report for the period July 1993 to August 1995.[4] In its report, the Exchange indicates that it believes, based on the pilot's performance, that the LMM System is viable and effective and that continuation of the pilot program is warranted based on the importance of maintaining the quality, efficiency, and competitiveness of the Exchange's markets in a multiple trading environment.

The Exchange notes that, at this time, it is considering substantive changes to the rules governing the LMM program. Therefore, the Exchange proposes to extent the pilot program for one year to allow additional time to evaluate the LMM program in light of any changes that may be approved within the next year. Moreover, if the Commission approves an extension of the program to September 30, 1996, the Exchange expects that it will seek permanent approval of the program (rather than an additional extension) prior to the expiration of the pilot extension.

The Exchange believes that its proposal is consistent with Section 6(b) of the Act in general, and Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PSE has requested that the Commission find good cause that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposal to extend the LMM pilot program through September 30, 1996 is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, the requirements of Sections 6(b)(5).[5] The Commission concludes, as it did in approving the LMM pilot program, that the pilot program may enhance the market making mechanism on the PSE, thereby improving the markets for listed options on the Exchange. Specifically, the Commission believes that the LMM pilot may improve the PSE's market making capabilities by creating long-term commitments to options classes. Moreover, the pilot program will continue with adequate due process safeguards in the LMM selection and termination procedures and will retain procedures that prevent the misuse of material non-public LMM information by either an LMM or a broker-dealer affiliated with an LMM. The Commission notes, however, that before the pilot program can be approved on a permanent basis, or further extended, the PSE must provide the Commission with an updated report on the operation of the pilot program.

Specifically, before requesting permanent approval, or further extension, of the pilot program, the PSE must submit an update pilot program report by June 1996 that addresses: (1) Whether there have been any complaints regarding the operation of the pilot; (2) whether the PSE has taken any disciplinary or performance action against any member due to the operation of the pilot; (3) the number of LMMs involved in the pilot; (4) the extent to which the pilot has been used on the PSE; (5) whether the PSE has terminated or replaced an LMM and the reasons thereof; (6) the impact of the pilot on the bid/ask spreads, depth and continuity in PSE options markets; and (7) whether the PSE has taken any actions or there have been any complaints against LMMs or associated broker-dealers relating to improper activity as a result of LMM affiliations with upstairs firms.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register because the PSE has not indicated that there have been any problems associated with the operation of the LMM system pilot program and because the Commission has not received any adverse comments concerning the pilot program. In addition, the Commission believes good cause exists to approve the extension of the LMM pilot program on an accelerated basis to allow the pilot program to continue uninterrupted. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to the file number in the caption above and should be submitted by October 26, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–PSE–95–20) is approved on an accelerated basis, and, accordingly, that the LMM pilot

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[2] *See* Securities Exchange Act Release No. 27631 (January 17, 1990), 55 FR 2462.

[3] *See* Securities Exchange Act Release Nos. 31063 (August 21, 1992), 57 FR 39255; 31635 (December 22, 1992), 57 FR 62414; 33854 (April 1, 1994), 59 FR 16873; and 34710 (September 23, 1994), 59 FR 50306. *See also* File No. SR–PSE–93–16 (requesting permanent approval of the pilot program) and Amendment Nos. 1–3 thereto (requesting pilot program extensions while the request for permanent approval was pending). On April 20, 1994, the Exchange withdrew File No. SR–PSE–93–16 pursuant to the Commission's request. *See* letter from David P. Semak, Vice President, Regulation, PSE, to Sharon M. Lawson, Assistant Director, Division of Market Regulation, Commission, dated April 20, 1994.

[4] The Exchange has previously submitted pilot program reports to the Commission dated September 18, 1992 and July 26, 1993. *See* Securities Exchange Act Release No. 31635, and File No. SR–PSE–93–16 (withdrawn), *supra* note 3.

[5] 15 U.S.C. § 78f(b)(5) (1988).

[6] 15 U.S.C. § 78s(b)(2) (1988).

program is extended until September 30, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–24793 Filed 10–4–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended September 22, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–663
Date filed: September 18, 1995
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1795 dated September 12, 1995 r–1 to r–18. TC2 Reso/P 1796 dated September 12, 1995 r–19 to r–32. TC2 Reso/P 1797 dated September 12, 1995 r–33 to r–43. Within Europe Expedited Resolutions.
Proposed Effective Date: November 1, 1995

Docket Number: OST–95–664
Date filed: September 18, 1995
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1799 dated September 15, 1995. Expedited Within Middle East Resos r–1 to r–5
Proposed Effective Date: November 1, 1995.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–24783 Filed 10–4–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[AC No. 120-PAAT III]

Proposed Advisory Circular (AC) on Determining Disposition of Undocumented Parts and Appliances

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed AC 120-PAAT III and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed AC pertaining to guidance to operator and repair station certificate holders to develop a system/plan for making a determination of conformity or acceptability for aircraft parts at incoming, receiving, and inspection, and for current inventories when the certificate holder lacks sufficient part documentation. This notice is necessary to give all interested persons the opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before January 3, 1996.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Airworthiness General Aviation and Commercial Branch, AFS–340, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Al Michaels, AFS–340, at the above address; telephone (202) 267–8203, or facsimile (202) 267–5115.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named under **FOR FURTHER INFORMATION CONTACT**. The proposed AC may also be downloaded from the FedWorld BBS by dialing (703) 321–8020, ANSI, 8, 1, N, 9600 baud, or through the Internet at the following Uniform Resource Location (URL): ftp://fwux.fedworld.gov/pub/faa.htm. The file name is ''ACPAAIII.TXT.'' Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Comments should identify AC 120–PAAT III, Determining Disposition of Undocumented Parts and Appliances, and submit comments, in duplicate, to the address specified above. All written comments received on or before the closing date will be considered by the Airworthiness General Aviation and Commercial Branch, AFS–340, before issuing the final AC.

Background

The aviation industry and the FAA have agreed that there needs to be a system/plan for evaluating the acceptability of aircraft parts existing within the certificate holder's present inventories for which the holders lack sufficient documentation for these parts to be installed on type-certificated products. Therefore, an Aviation Rulemaking Advisory Committee (ARAC) working group elected to accomplish this task through promulgation of an AC to provide the aviation community with guidance and information to develop the detailed system/plan. The procedures in this proposal AC would establish that the part conforms with applicable regulations and would enable the installer to establish that the part is acceptable for installation on type-certificated products.

Issued in Washington, D.C., on September 29, 1995.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 95–24800 Filed 10–4–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 22, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–666
Date filed: September 18, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 16, 1995
Description: Application of Sunworld International Airlines, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to enable it to engage in interstate and overseas air transportation of persons, property and mail.

Docket Number: OST–95–667
Date filed: September 18, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 16, 1995
Description: Application of Sunworld International Airlines, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to enable it to initiate scheduled and charter foreign air transportation between a point or

[7] 17 CFR 200.30–3(a)(12) (1994).

points in the United States, on the one hand, and Grand Cayman Island, West Indies, on the other hand.

Docket Number: OST–95–676

Date filed: September 21, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 5, 1995

Description: Application of Falcon Air Express, Inc., pursuant to 49 U.S.C. Section 41102(a)(3), and Subpart Q of the Act, applies for the issuance of a certificate of public convenience and necessity authorizing it to engage in foreign charter air transportation of persons property and mail between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States, and any point outside thereof.

Docket Number: OST–95–677

Date filed: September 21, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 19, 1995

Description: Application of Falcon Air Express, Inc., pursuant to 49 U.S.C. Sections 41101 and 41102 and Subpart Q of the Regulations, requests issuance of a Certificate of Public Convenience and Necessity authorizing it to engage in interstate and overseas charter air transportation of persons, property and mail.

Docket Number: OST–95–679

Date filed: September 22, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 20, 1995

Description: Application of World Airways, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q, requests an amendment to its certificate of public convenience and necessity to authorize World to engage in scheduled foreign air transportation of property and mail between the United States and Japan.

Docket Number: OST–95–682

Date filed: September 22, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 20, 1995

Description: Application of Air Micronesia, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for an amendment to its certificate of public convenience and necessity for Route 170 authorizing Air Micronesia to provide scheduled cargo service in foreign air transportation between Guam, a point or points in the Philippines, and a point or points in Taiwan, Korea, Singapore, Malaysia, and Indonesia.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–24782 Filed 10–4–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Situational Awareness for Safety Systems Requirements Team Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The concept of Situational Awareness for Safety (SAS) includes the exchange and use of GPS position, terrain, weather, and other information, effectively displayed to pilots, dispatchers, and controllers, to create an environment promoting more efficient, safe, and free use of airspace. This information exchange and use will contribute to an environment that will facilitate implementation of the emerging free flight concept. SAS is not a capability envisioned exclusively for air carriers, but applies to small general aviation and air taxi as well as large air carrier aircraft. This notice announces a meeting to solicit information from the aviation community concerning flight standards and procedural applications based on advances in human factors, cognitive pilot decision making, computer and display technology, precision navigation, data link, and aviation weather systems. The information is requested to assist the Situational Awareness for Safety Systems Requirements Team (SAS–SRT) in forming the requirements for Basic and Advanced Situational Awareness for Safety Systems. The focus of this government/industry team will be the validation of previously identified ''fast track'' avionics applications and the identification of FAA activities necessary to enable the implementation and operational use of these technologies.

DATES: The meeting will be held on October 26, 1995, from 8:00 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the Virginia Center for Innovative Technology, 2214 Rock Hill Road, Herndon, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Cato, Crown Communications, Inc., 1850 K Street, NW., Suite 1200, Washington, DC 20006; telephone (202) 785–2600, extension 3020.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting to solicit information from the aviation community concerning flight standards, and procedural applications based on advances in human factors, cognitive pilot decision making, computer and display technology, precision navigation, data link, and aviation weather systems. The information is requested to assist SAS–SRT in its deliberations with regard to a task assigned to SAS–SRT by the Federal Aviation Administration. Specifically the task is as follows:

Develop guidance, standards, and procedures that will: foster implementation of Situational Awareness for Safety (SAS) Systems; develop standards for the manufacture of equipment, hardware, software, and operational procedures; and coordinate validation of the SAS concept. SAS graphically displays aircraft position, terrain, weather, and other information, to pilots, dispatchers, and controllers. This information exchange will contribute to an environment that will promote an efficient and safe National Airspace System.

Attendance is open to the interested public, but may be limited to the space available. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Arrangements may be made by contacting the meeting coordinator listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on September 26, 1995.

James I. McDaniel,

Product Lead, Situational Awareness for Safety.

[FR Doc. 95–24804 Filed 10–4–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Use the Revenue From a Passenger Facility Charge (PFC) at Kent County International Airport, Grand Rapids, Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Kent County International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of

the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before November 6, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James A. Koslosky, Director of Aeronautics, of the Kent County Department of Aeronautics at the following address: Kent County Department of Aeronautics, Kent County International Airport, 5500 44th Street, S.E., Grand Rapids, Michigan 49512.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Kent County Department of Aeronautics under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jack D. Roemer, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (313–487–7282). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Kent County International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 21, 1995, the FAA determined that the application to use the revenue from a PFC submitted by Kent County Department of Aeronautics was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 3, 1996.

The following is a brief overview of the application.

PFC Application No.: 95–02–U–00–GRR.

Level of the PFC: $3.00.

Actual charge effective date: December 1, 1992.

Estimated charge expiration date: June 30, 2019.

Revised estimated PFC revenue: $94,359,802.00.

Brief description of proposed project(s): Construction of Runway 17/35 (8,500′ × 150′) and related facilities.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: air-taxi carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Kent County Department of Aeronautics.

Issued in Des Plaines, Illinois, on September 27, 1995.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–24799 Filed 10–4–95; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

English Language Programs Advisory Panel Meeting

ACTION: Notice of meeting.

SUMMARY: The United States Information Agency announces a meeting of the English Language Programs Advisory Panel on Thursday, November 2, and Friday, November 3, 1995, in Room 840 at USIA Headquarters, 301 Fourth Street, SW, Washington, DC. The agenda will include discussion of USIA's world-wide English teaching programming, especially as executed by the English Language Programs Division. The Panel will review and discuss the activities of the Field Programs and Materials Development/English Teaching Forum branches of the Division. The Special Assistance Program for Central and Eastern European Countries (SEED IV and V) will also be discussed, as well as the Agency's expanded English Language Fellows programs and new support programs in Russia and the NIS. There will be a review of the Agency's English Language Teaching by Broadcast (''Family Album, USA'' and ''Tuning in the USA'') project. Topics of professional concern, including the F–96 budget, affecting the execution of the Division's responsibilities will be addressed. The Panel will also consider the role played in supporting English teaching overseas by other elements of USIA.

DATES: November 2 and 3, 1995.

ADDRESSES: 301 Fourth Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT:

Richard Boyum at (202) 619–5869.

SUPPLEMENTARY INFORMATION: The November 2 meeting will be open to the general public. The November 3 meeting will be partially closed. In its final session on November 3, in preparing its report to the Director of USIA, the Panel will review information of a proprietary nature, including technical information and financial data, such as salaries. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act. Copies of the agenda may be obtained by calling (202) 619–5869.

Dated: September 28, 1995.

Richard A. Boyum,

English Language Programs Division.

[FR Doc. 95–24717 Filed 10–4–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 193
Thursday, October 5, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

FEDERAL REGISTER NUMBER: 95–24315.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, October 5, 1995, 10:00 a.m., Meeting open to the public.

The following item was added to the agenda pursuant to 11 CFR 2.7(d):

MCFL Regulations: Coordination; colleges and universities.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 95–24881 Filed 10–3–95; 11:27 am]

BILLING CODE 6715–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m. (EDT), October 16, 1995.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the September 18, 1995, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG Peat Marwick audit reports:

(a) ''Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Billing Process at the United States Department of Agriculture, National Finance Center.''

(b) ''Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Account Maintenance Sub-system at the United States Department of Agriculture, National Finance Center.''

(c) ''Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Participant Support Process at the United States Department of Agriculture, National Finance Center.''

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs (202) 942–1640.

Dated: October 3, 1995.

Roger W. Mehle,

Executive Director, Thrift Investment Board.

[FR Doc. 95–24934 Filed 10–3–95; 2:21 pm]

BILLING CODE 6760–01–M

Corrections

Federal Register
Vol. 60, No. 193
Thursday, October 5, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4F4368/R2166; FRL-4974-1]

RIN 2070-AB78

Gliocladium Virens Isolate GL-21; Exemption from the Requirement of a Tolerance

Correction

In rule document 95–23318 appearing on page 48657, in the issue of Wednesday, September 20, 1995, the heading is corrected to read as set above.

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212, 214, and 245

[INS No. 1683-94; A.G. Order No. 1986-95]

RIN 1115-AD86

Entry of Aliens Needed as Witnesses and Informants; Nonimmigrant S Classification

Correction

In rule document 95–21113 beginning on page 44260, in the issue of Friday, August 25, 1995, make the following corrections:

§212.4 [Corrected]

On page 44264, in the third column, in §212.4 (i)(2), in third line, ''and'' should read ''an''.

§214.1 [Corrected]

On page 44266, in the first column, in the amendatory instruction to §214.1, in paragraph c., in the first line, ''(c)(3)(iv),'' should read ''(c)(3)(vi)''.

§214.2 [Corrected]

On page 44267, in the 1st column, in §214.2 (t)(4)(i)(C), in the 14th line, ''or'' should read ''of''.

§245.11 [Corrected]

On page 44269, in the third column, in §245.11 (a)(4)(i), in the third line from the bottom, ''be'' should read ''the''.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36253; International Series Release No. 856; File No. SR-CBOE-95-41]

Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the Chicago Board Options Exchange Incorporated, Relating to Warrants on the Japanese Export Stock Index

September 19, 1995.

Correction

In notice document 95–23758 appearing on page 49654 in the issue of Tuesday, September 26, 1995, the release number is corrected as set forth above.

BILLING CODE 1505–01–Dt

Federal Register

Thursday
October 5, 1995

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 163
General Forestry Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 163

RIN: 1076–AC44

General Forestry Regulations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The purpose of this rulemaking action is to revise the General Forestry Regulations to implement the provisions of the National Indian Forest Resources Management Act enacted November 28, 1990.

The National Indian Forest Resources Management Act reaffirmed many aspects of the existing Indian forestry program and established new program direction for cooperative agreements, forest trespass, Secretarial recognition of tribal laws pertaining to Indian forest lands, Indian forestry program assessments, Indian forest land assistance accounts, tribal forestry programs, Alaska Native technical assistance and forestry education assistance.

EFFECTIVE DATE: November 6, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Stires, Forester, Billings Area Office, Bureau of Indian Affairs, 316 North 26th Street, Billings, Montana, 59101, Phone (406) 657–6358; or Mr. Terry Virden, Acting Chief, Division of Forestry, Department of the Interior, Bureau of Indian Affairs, Division of Forestry, 1849 C Street, NW, Mail Stop 4545 MIB, Washington, DC 20240, Phone (202) 208–6067.

SUPPLEMENTARY INFORMATION:

I. Background

The final rule has been developed with full participation and consultation of the affected Indian and Alaska Native public. Prior to drafting the proposed rule, public scoping meetings were announced and held in Minneapolis, Portland, Phoenix and Anchorage in February and March, 1991. Input from those meetings was considered and addressed in the rule. Additional consultation with the affected public was accomplished while drafting the rule by maintaining close communication with the Intertribal Timber Council (ITC) and including ITC members on the project steering committee and in project working groups.

Proposed regulations were published on January 27, 1994, at 59 FR 3952. Following publication, a 60-day public comment period was held extending through March 28, 1994. Early in the comment period, copies of the proposed rule and the schedule of planned regional public comment meetings were provided to tribes and Alaska Native Corporations to encourage the maximum possible review and critique of the proposed rule. During the comment period, regional public comment meetings were held in Phoenix, Minneapolis, Portland, Anchorage, and Fairbanks. A total of 142 written or oral comments made at public comment meetings were received from individuals and attorneys representing tribes, tribal enterprises, and Federal agencies, as well as from individuals commenting on their own behalf. The comments and the Department's response are summarized below. Public comments are arranged by section of the proposed rule as printed in the Federal Register on January 27, 1994.

II. Review of Public Comments

1. *Comment:* The Regulatory Flexibility Act requires that the certification of no impact on a substantial number of small entities must be accompanied by a succinct statement explaining the certification. The proposed rule did not contain the required statement.

Response: The statement explaining the certification of no impact was unintentionally omitted from the Supplementary Information section of the published proposed rule. The statement explaining the certification has been included under Part III of the preamble, Findings and Certifications.

Subpart A—General Provisions

163.1 Definitions

2. *Comment:* The definition of advance payment should be dropped since advance payments and advance deposits are essentially used in the same way.

Response: The rule has not been revised because advance payments and advance deposits are not the same, are requirements of timber sale contracts, and must be addressed in regulations establishing policy and guidance for such contracts.

3. *Comment:* The 30-day payment requirement in the definition of advance payments is unnecessary.

Response: The rule has not been revised because the definition is made in reference to standard timber contracts and provisions of the definition must conform to the term as used in such contracts.

4. *Comment:* The definition of bid deposit should include the option to convert bid deposits to performance bonds and advance payments in timber sale contracts.

Response: The rule has not been revised because contracts are more appropriate than regulations for providing specific guidance on the disposition of bid deposits. The definition of bid deposit in § 163.1 of the rule does not preclude use of bid deposits for performance bonds or advance payments if so stipulated in timber contracts.

5. *Comment:* The term ''expenditure plan'' used in § 163.25(f) of the rule should clarify the type of plan required to budget and use forest management deductions.

Response: The rule has been revised to include a definition of expenditure plan in § 163.1 to clarify plan requirements.

6. *Comment:* In the definition of forest or forest land, the phrase ''more or less dense'' is ambiguous and unnecessary.

Response: The rule has not been revised because the wording of the definition is taken directly from 25 U.S.C. 3103(3) and is appropriate in the context used.

7. *Comment:* The definition of forest land management activities in § 163.1 of the rule should include the comprehensive list of such activities contained in 25 U.S.C. 3103(4).

Response: The definition of forest land management activities in § 163.1 of the rule has been revised to include the comprehensive list of forest land management activities contained in 25 U.S.C. 3103(4) to clarify activities addressed by the rule.

8. *Comment:* Include a definition of forest officer in § 163.1 of the rule.

Response: The rule has not been revised because forest officer is defined in the standard provisions used for all timber sale contracts. For ready reference, the definition of forest officer is the person of highest rank assigned to the supervision of forestry work at the Indian Agency having jurisdiction over the sale area, or his authorized representative.

9. *Comment:* The definition of forest products in § 163.1 of the rule is too broad for use in context with stumpage rate, and, therefore, may create confusion on basis of payment and accounting for proceeds from the sale of forest products.

Response: The rule has not been revised because the wording of the definition is taken directly from 25 U.S.C. 3103(6) and the definition is intentionally broad to encompass the many products from Indian forest land.

10. *Comment:* The definition of forest management plan in § 163.1 of the rule should be expanded to include language requiring that such plans meet the objectives of individual land owners in addition to those of tribes.

Response: The rule has not been revised because the wording of the definition is taken directly from 25 U.S.C. 3103(5).

11. *Comment:* The definition of forest management plan in § 163.1 of the rule implies that an integrated resource management plan must be completed prior to developing a forest management plan. This seems to contradict § 163.11(b) of the rule which states that a forest management plan may be developed without an integrated resource management plan.

Response: The preparation of forest management plans is required by 25 U.S.C. 3104(b)(1). The National Indian Forest Resources Management Act also requires that forest management plans be consistent with integrated resource management plans whenever such plans exist. However, while the act encourages preparation of integrated resource management plans it does not require them. The rule has not been revised because it provides clear direction in regards to the requirements for integrated resource management plans and the forest management plans in § 163.11 of the rule.

12. *Comment:* The definition of Indian land in § 163.1 of the rule is not clear on whether Indian land is only trust land or includes fee land owned by a tribe.

Response: The rule has not been revised because the wording of the definition is substantively the same as in 25 U.S.C. 3103(10) and the language offers clear guidance on the type of land that constitutes Indian land for the purpose of the rule.

13. *Comment:* The definition of noncommercial forest land in § 163.1 of the rule does not adequately define land so categorized.

Response: The definition in § 163.1 of the rule has been revised to clarify criteria for categorizing forest land as noncommercial. The revision made emphasizes that such land is incapable of producing sustainable forest products within the general rotation period but allows for harvest from such lands.

14. *Comment:* The definition of productive forest land in § 163.1 of the rule is confusing because it states that such lands are unavailable for harvest.

Response: The rule has not been revised because the definition of productive forest land was developed to fit the land classification system used by the BIA Forestry Program and, therefore, must address forest land which has productive capacity but has been administratively withdrawn from the land base identified for management to produce forest products.

15. *Comment:* The definition of reservation in § 163.1 of the rule should specifically include Alaska Native allotments since they are a separate class of allotments which should be given the same status as reservations under the rule.

Response: The definition of reservation in § 163.1 of the rule has been revised to specifically include Alaska Native allotments to allow regulations in the rule to better address the unique situation of Alaska Native allotments.

16. *Comment:* The definition of reservation in § 163.1 of the rule should be expanded to clarify what lands constitute ''former reservations in Oklahoma''.

Response: The rule has not been revised because the definition of reservation in 25 U.S.C. 3103(12) refers to the Oklahoma Indian Reservations solely as ''former Indian reservations in Oklahoma'' and that description is adequate to identify such lands for the purpose of this rule.

17. *Comment:* The definition of sustained yield in § 163.1 of the rule should be related to a given level of production rather than a given intensity of management.

Response: The rule has not been revised because the wording of the definition is the same as in 25 U.S.C. 3103(14) and the definition is in harmony with the technical meaning of the term as used by the forestry profession.

18. *Comment:* The definition of trespass does not relate to § 163.29 of the rule and does not capture the intent of 25 U.S.C. 3106, especially in regards to damage resulting from fire.

Response: The definition of trespass in § 163.1 of the rule has been revised to better encompass the intent of 25 U.S.C. 3106 and specifically address trespass related to fire.

19. *Comment:* Is the word ''initiated'' in the definition of tribal forest enterprise in the rule necessary?

Response: The rule has not been revised because restricting tribal enterprises to those both ''initiated and organized'' by a reservation's recognized tribal government appropriately emphasizes the tribe's role in formation of such enterprises. The requirement of tribal sole ownership is excluded from the definition to provide tribes the flexibility needed to initiate and organize tribal forest enterprise through joint ventures or other business arrangements where enterprise ownership may not be possible or advantageous.

20. *Comment:* The definition of woodland in § 163.1 of the rule does not adequately provide for the classification of lands used for other than production of wood products.

Response: The definition of woodland in § 163.1 of the rule has been revised to emphasize that land classified as woodland may produce any forest product rather than just wood products.

163.3 Scope and Objectives

21. *Comment:* The objectives enumerated in § 163.3 of the rule are contradictory and lack specificity.

Response: The rule has not been revised because the objectives must be broad based to address the wide range of objectives tribes may have for managing their lands. The objectives are not contradictory in that tribes and the Secretary would not manage to achieve all objectives on a given tract of land at one time.

22. *Comment:* Include a clause requiring ecosystem management in the objectives enumerated in § 163.3 of the rule.

Response: The rule has not been revised because the concept of ecosystem management is embodied in the diverse objectives included in § 163.3 of the rule.

23. *Comment:* § 163.3(b)(2) of the rule should require that forest management plans be approved by tribes rather than requiring their consultation and participation in plan development.

Response: The rule has not been revised because the existing language appropriately acknowledges the intent of the National Indian Forest Resources Management Act which is to maintain the Secretary's trust responsibility on Indian land while emphasizing tribal sovereignty. Under normal circumstances the Secretary would not approve a forest management plan in the absence of the tribe's approval; however, the language in § 163.3(b)(2) of the rule intentionally maintains discretionary authority to fulfill the Secretary's trust responsibility.

24. *Comment:* Objectives enumerated in § 163.3(b)(2) of the rule should be expanded to provide for the improvement and maintenance of the road system.

Response: The definition of forest land management activities in § 163.1 of the rule has been revised to include all such activities enumerated in 25 U.S.C. 3103(4).

25. *Comment:* Suggest making the following language changes to § 163.3 of the rule. In § 163.3(b)(1) change the

phrase ''in forest management plans by providing'' to ''by the tribe to provide.'' In § 163.3(b)(4) delete the word ''all'' from the phrase ''all the labor and profit.'' In § 163.3(b)(5) change the term ''natural state'' to ''existing state.'' In § 163.3(b)(7) substitute ''range quality'' for ''grazing,'' ''maintenance and/or improvement'' for ''maintenance and improvement'' and add ''water quality'' to the list of values.

Response: The rule has not been revised because the objectives in § 163.3 of the rule are taken directly from 25 U.S.C. 3104.

163.4 Secretarial Recognition of Tribal Laws

26. *Comment:* Additional guidance is needed in regards to the type of assistance in the enforcement of tribal laws provided for in § 163.4(a) of the rule.

Response: The rule has not been revised because guidelines on the type of law enforcement assistance are intentionally broad to encompass the wide range of situations which may arise under different tribal laws.

27. *Comment:* In § 163.4 of the rule, state that Indian land shall be considered private land for the purposes of the Endangered Species Act.

Response: The rule has not been revised because the proposal to consider Indian land as private land for the purposes of the Endangered Species Act is outside the scope of these regulations.

Subpart B—Forest Management and Operations

163.11 Forest Management Planning and Sustained Yield Management

28. *Comment:* In § 163.11(a) of the rule, require that a forest management plan be prepared every ten years rather than as needed.

Response: The rule has not been revised because requiring forest management plan preparation and revision as needed rather than at fixed time intervals gives land owners and land managers flexibility needed in the forest management planning process.

29. *Comment:* § 163.11(a) of the rule implies that forest management planning is reserved for tribal land when it should be for all Indian land.

Response: § 163.11(a) of the rule has been revised to emphasize that forest management plans shall be prepared and revised as needed for all Indian forest land.

30. *Comment:* What are requirements for integrated resource management plans in respect to preparation of forest management plans in § 163.11 of the rule?

Response: The preparation of forest management plans is required by 25 U.S.C. 3104(b)(1). The National Indian Forest Resources Management Act also requires that forest management plans be consistent with integrated resource management plans whenever such plans exist. However, while the act encourages preparation of integrated resource management plans it does not require them. The rule has not been revised because it provides clear direction in regards to the requirements for integrated resource management plans and the forest management plans in § 163.11 of the rule.

31. *Comment:* Is it appropriate to require that harvest of forest products be accomplished under the principle of sustained yield management in § 163.11(c) of the rule?

Response: The rule has not been revised because 25 U.S.C. 3104(b)(1) requires that sustained yield management be practiced on Indian forest land. The definition of sustained yield management in the rule is sufficiently broad to allow the needed flexibility in how this management requirement is applied.

32. *Comment:* § 163.11(c) of the rule should require that harvest schedules achieve a balance between experienced net growth and harvest rather than between planned net growth and harvest.

Response: § 163.11(c) of the rule has been revised to require that harvest schedules achieve an approximate balance between net growth and harvest at the earliest possible time.

33. *Comment:* Does the requirement to practice sustained yield management in § 163.11(c) of the rule apply to allotments and small reservations?

Response: The rule has not been revised because, even though it is technically more difficult to strictly apply the principles of sustained yield management to small land areas, it is possible. Also, 25 U.S.C. 3104(b)(1) requires that sustained yield management be practiced on all Indian forest land, so the requirement does apply to allotments and small reservations.

34. *Comment:* § 163.11(c) of the rule should provide for basing harvest level on silvicultural treatment needs rather than on net growth.

Response: The rule has not been revised because, while the time period over which the balancing of growth and harvest may vary depending on treatment needs, harvest levels should be based on the objectives of the beneficial owners and growth. The rule does not preclude consideration of silvicultural treatment needs when harvest planning but, over the long term, the rule correctly requires that growth and harvest be in balance.

163.12 Harvesting Restrictions

35. *Comment:* The term ''forestation'' in § 163.12(a) of the rule should be changed to ''reforestation'' to comply with standard forestry terminology.

Response: § 163.12(a) of the rule has been revised to use the term ''reforestation'' since the intent is to provide for reestablishing tree cover on land that previously was forested.

36. *Comment:* The term ''harvest plans'' referred to in § 163.12(a) of the rule should be defined.

Response: The rule has not been revised because the term ''harvest plans'' in the context of use in § 163.12(a) is sufficiently explicit to cover the wide range of operations to be conducted under the rule.

37. *Comment:* Language restricting clearcutting to situations when it is silviculturally good practice in § 163.12(b) of the rule is confusing because it implies that clearcutting and silviculture are one and the same.

Response: § 163.12(b) of the rule has been revised to emphasize that clearcutting and silviculture are not one and the same.

163.13 Indian Tribal Forest Enterprise Operations

38. *Comment:* How is the term ''Indian owners'' in § 163.13(c) of the rule different from ''beneficial Indian owners'' used in § 163.13(a)?

Response: In the context used, the terms are the same. Since beneficial owner is defined within the rule, the rule has been revised so that ''beneficial Indian owner'' is used uniformly.

39. *Comment:* § 163.13(c) of the rule should explicitly require tribal approval of sales to Indian tribal forest enterprises.

Response: The rule has not been revised because § 163.14 of the rule requires tribal approval for all sales of tribal timber.

40. *Comment:* § 163.13(c) of the rule should define Indian owner for the purpose of timber sales to tribal forest enterprises.

Response: The rule has not been revised because the term Indian owner is adequately defined in § 163.1 for the purpose of conducting any timber sale under the rule.

163.14 Sale of Forest Products

41. *Comment:* § 163.14 of the rule should include more detailed instruction on timber sale procedures.

Response: The rule has not been revised because policy in § 163.14 of the

rule is adequate to establish uniform operating policy for the sale of Indian forest products. Specific procedural information is more appropriately a matter for inclusion in the BIA forestry manual.

42. *Comment:* § 163.14(e) of the rule should use the phrase ''appraised by the Secretary'' rather than ''established by the Secretary.''

Response: The rule has not been revised because use of the phrase ''established by the Secretary'' gives needed flexibility to procedures for value determination.

43. *Comment:* In § 163.14 of the rule, why are sales of forest products from allotted land subject to tribal economic objectives?

Response: The rule has not been revised because tribal governments have jurisdiction over all land within reservation boundaries.

44. *Comment:* § 163.14 of the rule should include specific forest product sale policy for trust allotments located off reservations.

Response: The rule has not been revised because policy in § 163.14 of the rule applies to Indian forest land which, by definition, can include trust allotments located off reservations.

45. *Comment:* § 163.14(b) of the rule should emphasize the need for the Secretary's consultation with the beneficial owner(s) in catastrophic situations where the sale of forest products is necessary to prevent loss of value.

Response: § 163.14(b) of the rule has been revised to emphasize the need for consultation in cases where catastrophe necessitates the sale of Indian forest products.

163.15 Advertisement of Sales

46. *Comment:* In § 163.15(a) of the rule, add the requirement that the beneficial Indian owners consent of advertisement be obtained in sales of forest products to Indian forest enterprises.

Response: The rule has not been revised because the approving officer has adequate authority to protect allottee economic interests in sales of forest products to Indian forest product enterprises.

47. *Comment:* Agency Superintendents at some BIA field office locations do not have authority to issue advertisements due to limitations imposed by 10 BIA manual, so the superintendent advertising authority in § 163.15(a) of the rule could create administrative problems in the advertisement of sales of forest products.

Response: The rule has not been revised because the intent of the rule is to establish uniform operating procedures for the national program, not to tailor the rule to unique BIA field office situations.

48. *Comment:* § 163.15 of the rule provides for advertising open market sales of forest products except as provided in §§ 163.13, 163.14, 163.16, and 163.26. The provision in § 163.14 for other than advertised sales is not apparent.

Response: The rule has not been revised because the exceptions to open market advertised sales enumerated in § 163.15 apply to both procedure and policy and are therefore appropriate.

50. *Comment:* Forest product threshold values used to establish forest product advertisement types in § 163.15(a) of the rule are too low in light of present day forest product values.

Response: The rule has not been revised because values established for different types of advertisement requirements (e.g. circulars, posters, newspaper advertisements) are appropriate for thresholds identified.

163.16 Forest Product Sales Without Advertisement

51. *Comment:* § 163.16(a) of the rule seems to repeat the conditions for unadvertised sales of forest products stipulated in § 163.13(c).

Response: The rule has not been revised because the conditions for unadvertised sales enumerated in § 163.16(a) are in the context of any sale of forest products while those in § 163.13(c) are for unadvertised sales to Indian tribal forest enterprises.

163.17 Deposit with Bid

52. *Comment:* Does § 163.17 of the rule change the BIA policy regarding deposits with bids that requires such deposits to be held as a separate bond in cases where purchasers provide a performance bond and execute a contract, but fail to perform the contract?

Response: BIA policy in regards to the disposition of bid bonds has not changed. The intent is to allow the Bureau to retain the bid deposit on behalf of the beneficial owner(s) of the timber if the bidder does not furnish the required performance bond, execute the contract or perform the contract.

53. *Comment:* The meaning of the term ''escrow account'' in § 163.17(f) of the rule is unclear.

Response: The rule has not been revised because the term ''escrow account'' is generally understood to be a third party holding account and is appropriate in the context used.

54. *Comment:* § 163.17(b) of the rule should be modified to delete cash as an acceptable form of deposit.

Response: The rule has not been revised because cash is an acceptable form of payment for deposit.

55. *Comment:* The minimum bid deposit of $1,000.00 in § 163.17(a)(1) of the rule should be deleted because it is believed to be burdensome to small timber operators.

Response: The rule has not been revised because the bid deposit requirement is needed to safeguard the interests of the beneficial Indian owner(s) and such a deposit is an accepted sound business practice.

56. *Comment:* The requirement to perform the contract in § 163.17(d)(3) of the rule is redundant and should be deleted.

Response: The rule has not been revised because failure to perform the contract may be legitimate grounds for forfeiture of a bid deposit.

57. *Comment:* Change the title of § 163.17 from Deposit with bid to Deposit for primary forest products purchased by non-tribal enterprises.

Response: The rule has not been revised because the title of § 163.17 accurately describes policy covered in this section of the rule.

58. *Comment:* § 163.17 of the rule should allow for tribal forest enterprises to not submit bid deposits when purchasing trust timber.

Response: The rule has not been revised because § 163.13 Indian tribal forest enterprise operations of the rule provides sufficient flexibility to waive requirements for bid deposits in cases where such deposits would serve no purpose.

163.18 Acceptance and Rejection of Bids

59. *Comment:* In § 163.18(b) of the rule, the term ''approving officer'' should be changed to the term ''approving tribal officer'' to emphasize the role of the tribe in the bid rejection process.

Response: The rule has not been revised because it provides the approving officer with discretion to consult with the beneficial Indian owners in the process of determining the course of action when rejecting a high bid.

163.19 Contracts for the Sale of Forest Products

60. *Comment:* § 163.19(b) of the rule should specify that electronic fund transfer (EFT) is the preferred method of payment for forest products.

Response: The rule has not been revised because § 163.19(b) provides for payment by remittance and remittance includes EFT. If EFT is the preferred method of payment, contracts or permits may so stipulate.

163.21 Bonds Required

61. *Comment:* The term ''approving officer'' in § 163.21(a) of the rule should be changed to ''tribal approving officer'' to emphasize the tribe's role in the performance bonding process.

Response: The rule has not been revised because it provides the approving officer with discretion to consult with the beneficial Indian owners in the process of determining performance bonding requirements.

62. *Comment:* § 163.21 of the rule should provide for more flexibility in bonding tribal loggers.

Response: The rule has not been revised because approving officers have sufficient discretion on bonds to provide the needed flexibility in bonding tribal loggers.

63. *Comment:* § 163.21(b)(1) of the rule should be deleted because of the difficulty in recovering corporate surety bonds.

Response: The provision in the rule allowing for the use of a corporate surety bond as a legitimate form of bond has not been revised. However, provisions in 163.21(b) (2) and (3) of the rule stipulating use of an appropriate power of attorney cause concern because a power of attorney expires upon death of the principal and can be revoked by the principal. For this reason, 163.21(b) (2) and (3) of the rule have been revised to require an appropriate trust instrument instead of a power of attorney to ensure access to cash or government securities used as a performance bond. Regardless of which type of performance bond is offered by a contractor, approving officers have discretion to determine whether or not they are acceptable for use with contracts.

163.23 Advance Payment for Timber Products

64. *Comment:* § 163.23 of the rule should include additional language that would require agreement between a tribe and their tribal forest enterprise before advance payments can be required.

Response: The rule has not been revised because advance payments as provided for in § 163.23(b) are optional on tribal lands, therefore making a formal agreement unnecessary.

65. *Comment:* § 163.23 of the rule should not require advance payments on tribal land.

Response: The rule has not been revised because advance payments as provided for in 163.23(b) are optional on tribal lands.

163.25 Forest Management Deductions

66. *Comment:* The provision in § 163.25(f) of the rule which requires that any forest management deductions not incorporated into an approved expenditure plan by the end of the fiscal year following the fiscal year in which the deductions are withheld shall be collected into the general funds of the U.S. Treasury does not provide a reasonable time period for tribes to prudently expend such funds and may result in their loss.

Response: The rule has not been revised because, as stated in the rule, the provisions set forth in § 163.25(f) of the rule are required by 25 U.S.C. 413. § 163.25(f) of the rule only requires that forest management deductions be incorporated into an approved expenditure plan within the prescribed time period, not that they be expended, so they may be used prudently.

67. *Comment:* The term ''summarizing'' should be substituted for the term ''detailing'' in § 163.25(h) of the rule because ''detailing'' implies too exact a level of reporting.

Response: The rule has not been revised because the exact form of the report which will be required is more appropriately a matter for the BIA forestry manual.

68. *Comment:* Allottees should be given discretionary authority to decrease or waive collection of forest management deductions in § 163.25 of the rule.

Response: The rule has not been revised because discretionary authority for establishing forest management deduction rates is reserved for the Secretary except where limited by statute.

69. *Comment:* The 10 percent forest management deduction provided for in § 163.25(d) of the rule is excessive in light of the high value of forest product sales from allotments.

Response: The rule has not been revised because, absent tribal approval and Secretarial action as provided for in § 163.25(e), the lessor of the percentage in effect on November 1990 or 10 percent must be collected.

70. *Comment:* § 163.25 of the rule should require that forest management deductions collected from allotted land be spent on the land from which they were earned.

Response: The rule has not been revised because 25 U.S.C. 3105 and 25 U.S.C. 413 do not require that the benefits of forest management deductions accrue to the specific land from which they were earned and establishing such a requirement would unnecessarily constrain Indian forest land management activities.

71. *Comment:* Provide authority for administrators of allotment forestry programs to submit expenditure plans and reports in § 163.25(f)(1) of the rule.

Response: The rule has not been revised because § 163.25(f)(3) of the rule provides the requested authority in the cases of public domain and Alaska Native allotments where absence of such authority could be a problem.

72. *Comment:* Does § 163.25 of the rule require that forest management deduction collections cannot exceed agency forestry program appropriations?

Response: There is no statutory or § 163.25 rule requirement which limits the amount of forest management deductions collected to an amount less than an agency's forestry program appropriation.

73. *Comment:* Does the reporting requirement in § 163.25(h) of the rule apply to the Yakima tribe?

Response: The reporting requirement in § 163.25(h) of the rule applies universally.

74. *Comment:* In regards to § 163.25 of the rule, can a tribe receive forest management deductions prior to expending its own funds?

Response: § 163.25(f)(1) of the rule provides that approval of an expenditure plan by an Indian tribe constitutes appropriation of tribal funds and approval by the Bureau constitutes authority to credit forest management deductions to tribal accounts.

75. *Comment:* § 163.25 of the rule should be modified to allow forest management deductions not incorporated into an approved expenditure plan to be deposited into an Indian forest land assistance account.

Response: The rule has not been revised because the absence of an approved expenditure plan triggers application of the general rule of 25 U.S.C. 413 which requires that such funds be deposited into the U.S. Treasury as miscellaneous receipts.

76. *Comment:* 25 U.S.C. 3105 does not allow for waiving forest management deductions under specified circumstances as provided for § 163.25(c)(1) of the rule.

Response: The rule has not been revised because the Secretary has determined that it is not administratively feasible or reasonable to collect forest management deductions in cases where the total consideration furnished under a contract, permit or other document for the sale of forest products is less than $5,001.

77. *Comment:* § 163.25(e) states that the Secretary shall increase the forest management deduction upon receipt of a written request from a tribe supported by a tribal resolution. Since provisions of 25 U.S.C. 3105 do not require such an action to be mandatory upon receipt of the stipulated documents, the Secretary's decision on such matters should be discretionary.

Response: The rule has been revised to change the word ''shall'' to ''may'' in the first sentence of § 163.25(e) to preserve the Secretary's discretionary authority on requests to increase forest management deductions.

78. *Comment:* § 163.25 of the rule must provide for incorporating interest earned on forest management deductions into expenditure plans to ensure that interest income is available for use.

Response: The rule has not been revised because existing Bureau accounting regulations require that interest earned on forest management deductions follow principal so interest earned on forest management deductions may be incorporated into expenditure plans.

79. *Comment:* The prohibition on withholding forest management deductions from monies collected or derived from trespass, defaulted contracts or other civil judgements in § 163.25(c)(2) of the rule should be deleted because it is appropriate that forest management deductions be collected on single stumpage value in such cases.

Response: The rule has been revised by deleting § 163.25(c)(2) of the rule because this recommendation is consistent with past policy and 25 U.S.C. 3105 does not prohibit the change.

80. *Comment:* Modify the definition of gross proceeds in § 163.25(b) of the rule by adding a provision to take into consideration Indian investments and using formulas and methods approved by the Secretary for individual locations.

Response: The rule has not been revised because the definition in § 163.25(b) of the rule accurately reflects the language in 25 U.S.C. 3105(a) which describes gross proceeds of sales of forest products and the definition is appropriate for establishing uniform operating procedures for the Indian forestry program.

81. *Comment:* § 163.25 of the rule should be modified to allow timber sale special purchaser payments to be added to forest management deductions so their use can be determined in consultation with tribes.

Response: The rule has not been revised because timber sale special purchaser payments are required payments for contract specified activities and, therefore, cannot be commingled with forest management deductions.

82. *Comment:* Modify § 163.25(j) of the rule by adding the word ''miscellaneous'' to describe the type of U.S. Treasury receipt account.

Response: § 163.25(j) of the rule has been revised by adding the word ''miscellaneous'' before U.S. Treasury receipt account to emphasize that such funds may not be used to augment any appropriated fund.

163.26 Forest Product Harvesting Permits

83. *Comment:* In §§ 163.26 (b) and (c) of the rule, increase the annual value of forest products that can be harvested under free use forest permits to $10,000 and under paid permits to $50,000.

Response: The rule has not been revised because the $5,000 free use and $25,000 paid permit maximum annual harvest values in the rule provide sufficient flexibility for the harvest of forest products under permits.

84. *Comment:* In § 163.26(d) of the rule, does the condition to issuance of a special allotment timber harvest permit which requires terms that protect the Indians' interests conflict with § 163.14(d) of the rule?

Response: There is no conflict between the two parts of the rule. § 163.14(d) of the rule requires apprising the beneficial owners of forest product values and Secretarial approval to sell products at less than their appraised value. § 163.26(d) of the rule stipulates that issuance of a special allotment timber harvest permit requires terms that protect the Indians' interests.

85. *Comment:* § 163.26 of the rule should provide for issuance of special allotment timber harvest permits in the case of multiple owners.

Response: The rule has not been revised because issuance of special timber harvest permits when there is more than one beneficial owner would make it difficult or impossible for the Secretary to fulfill the trust responsibility to all beneficial owners involved in such cases.

163.27 Free-Use Harvesting Without Permits

86. *Comment:* There should be a $15,000 annual limit on harvest authority under § 163.27 of the rule.

Response: The rule has not been revised because § 163.27 of the rule appropriately provides that the limit on products harvested under the free-use authority be established by the Indian owners and that products harvested under the authority be limited to personal use.

163.28 Fire Management Measures

87. *Comment:* Include authority for the Secretary to expend funds for the procurement of Smokey Bear and other promotional materials utilized for fire prevention purposes in § 163.28(b) of the rule.

Response: The rule has not been revised because implicit in § 163.28(b) of the rule which requires the Secretary to conduct a wildfire prevention program is an authorization to expend funds for that purpose.

88. *Comment:* Use of the phrase ''The Secretary will'' rather than ''The Secretary is authorized to'' conduct a wildfire prevention program in § 163.28(b) of the rule is inappropriate because lack of funds may prevent the Secretary from being able to conduct the program.

Response: The rule has been revised to make the requested change.

89. *Comment:* In § 163.28(d) of the rule, require the approval of the beneficial Indian owners be obtained rather than merely requiring consultation with the beneficial owners before using fire as a management tool.

Response: The rule has not been revised because use of fire as a management tool is carried out under the framework of resource management plans which must be approved by the Secretary and beneficial Indian owners.

163.29 Trespass

90. *Comment:* § 163.29 of the rule should allow the Federal government to recover the expense of trespass investigation.

Response: § 163.29 of the rule has been revised to provide for recovering trespass associated expenses of the Federal government and tribes.

91. *Comment:* § 163.29(a)(3)(i) of the proposed rule appears to limit trespass to trees, timber or shrubs. In light of the comprehensive list of products included in the definition of forest products in § 163.1 of the rule, such a limitation is inconsistent with the intent of 25 U.S.C. 3106.

Response: § 163.29 of the rule has been revised to include all forest products as listed in the definition of forest products in § 163.1 of the rule to ensure providing for the broad scope of trespass protection intended by 25 U.S.C. 3106.

92. *Comment:* Determining trespass damages will be difficult and controversial if the highest valued product obtainable as called for in

§ 163.29(a)(3)(i) of the proposed rule must be used.

Response: § 163.29 of the rule has been revised to require using the highest stumpage value of raw materials rather than the highest valued product obtainable for the purpose of establishing trespass damages.

93. *Comment:* Does the Secretary have seizure authority on lands not under the government's supervision in the absence of a court order as provided for in § 163.29(e) of the proposed rule?

Response: Indian forest products are real property owned by the United States in trust for individual Indians and Indian tribes. In the National Indian Forest Resources Management Act, Congress has directed the Secretary to promulgate regulations which establish civil penalties for the commission of forest trespass and provide for collection of the value of the products. Seizure of forest products owned by the United States and situated on Indian land is one such civil penalty. The proposed language regarding seizure of forest products off-reservation and seizure of property and equipment is too broad and not supported by law as drafted in the proposed rule. Therefore, the seizure regulations as drafted in §§ 163.29 (e), (f) and (g) of the proposed rule have been revised and clarified to comport with existing federal, tribal and state law.

94. *Comment:* Does the Secretary have authority to seize and sell equipment belonging to someone else in the absence of a court order?

Response: The seizure regulation as drafted in the proposed rule is too broad and raises questions as to the Secretary's private property seizure authority both on and off Indian land. § 163.29 of the rule has been revised to reflect two categories of seizure: Seizure of trespass Indian forest products on or near Indian land and notice of possible trespass where such products are not on or near Indian land and now includes specific notice provisions.

Provisions for seizure of property and equipment situated on or off-reservation which was used in committing trespass have been deleted from § 163.29 of the rule because such seizure actions lack Federal statutory authority. However, if tribal law provides for seizure of property and equipment situated on-reservation which was used in committing trespass, tribes may take such action under their own law and jurisdictional authority.

95. *Comment:* § 163.29(f) of the proposed rule should confer trespass enforcement authority upon forest officers rather than on individuals.

Response: § 163.29 of the rule has been revised to clarify the term ''individual'' in the context of trespass enforcement.

96. *Comment:* § 163.29(k) of the proposed rule should affirm Indian sovereignty over wildlife matters by making it a trespass for local, state, and Federal government officials to conduct wildlife studies on Indian land without prior authorization.

Response: The rule has not been revised because the proposal to make it a trespass for local, state, and Federal government officials to conduct wildlife studies on Indian land without prior authorization is outside the scope of these regulations.

97. *Comment:* To be consistent with the definition of forest products in § 163.1 of the rule, the phrase ''timber and related trespass'' in §§ 163.29(a)(1) and (2) of the proposed rule should be replaced with the word ''trespass.''

Response: § 163.29 of the rule has been revised to replace the phrase ''timber and related trespass'' with the term ''trespass.''

98. *Comment:* Provisions in §§ 163.29(a)(3) (i) and (ii) of the proposed rule should be revised to ensure that beneficial Indian owners receive the full measure of damages, even when long periods of time have elapsed between a trespass act and its discovery.

Response: § 163.29 of the rule has been revised to capture the highest stumpage value and provide for interest on such value from the date of trespass. The interest provision will ensure that beneficial owners are compensated for time delays which may occur from the time of taking until recovery of damages.

99. *Comment:* 25 U.S.C. 3106 authorizes treble damages as the value of damages for trespass but §§ 163.29 (a)(3) (i) and (ii) of the proposed rule provide for double or triple damages depending on circumstances. Given that 25 U.S.C. 3106 authorized triple damages as the exclusive remedy for trespass and that providing for two different levels of damages could cause confusion in damage collection for trespass, the rule should only provide for a single category of treble damages.

Response: § 163.29 of the rule has been revised to only provide for a single category of treble damages.

100. *Comment:* § 163.29(a)(3)(iii) of the proposed rule should be revised to provide for interest as a payable cost associated with damages to ensure that owners are made whole in cases where there is a long delay between the trespass act and collection of damages.

Response: § 163.29 of the rule has been revised to provide for the collection of interest as a part of trespass damages.

101. *Comment:* The last sentence in § 163.29(b) of the proposed rule requires that penalty damages collected be equitably distributed among beneficial owners. In the event of underrecovery of civil penalties, there is no provision to share damages recovered with other than the beneficial owners. Enforcement agencies will not be able to recover any payment for reasonable costs associated with detection or prosecution. § 163.29 of the proposed rule should be revised to allow for the prorated distribution of collections to both payment of damages to beneficial owners and payment of reasonable costs to the enforcement agency.

Response: § 163.29 of the rule has been revised to provide for sharing of payment for damages between beneficial owners and tribal or federal enforcement agencies under some circumstances. Historically, where recovery in trespass is deficient, the United States has foregone its entitlement to damages in favor of reimbursing beneficial Indian owners to the greatest extent possible. However, since under the revised rule the amount due to Indian beneficial owners was expanded to include the product value plus double-value penalty recoveries, it is reasonable to provide for paying costs associated with detection and prosecution to enforcement agencies in situations when beneficial Indian owners have been fully reimbursed for loss due to trespass. This is true since part of the increased recovery right is compensatory and part is a penalty or ''windfall'' recovery.

102. *Comment:* § 163.29(c) of the proposed rule should specify how to dispose of damage payments not distributed to owners trespassing on their own land.

Response: § 163.29 of the rule has been revised to stipulate that the defaulted share of owners who trespass on their own land shall go first to any restoration costs resulting from the trespass, second to law enforcement costs resulting from the trespass, and third to the reservation forest management deduction account.

103. *Comment:* Should § 163.29(d) of the proposed rule stipulate treating civil penalties collected for damages in trespass actions as proceeds from the sale of forest products from the Indian forest land upon which the trespass occurred?

Response: The purpose of this rule is to ensure that proceeds recovered in consequence of trespass remain

available to pay their fair share of forest management deductions, as if the trespass products had been harvested under a normal harvest operation. As drafted in 25 U.S.C. 3106, civil penalties is broadly defined to include among other things the recovery of compensatory damages, restoration costs and enforcement costs. As such, gross proceeds (amount recovered as compensatory damages, less restoration costs and enforcement costs) should remain subject to applicable forest management deductions. Restoration costs and enforcement costs are clearly not the proceeds from sale. § 163.29 of the rule has been revised to reflect this fact.

104. *Comment:* Procedures on concurrent civil jurisdiction and administrative appeals in § 163.29(j) of the proposed rule are confusing and cumbersome.

Response: The comment references the confusion from a possible dual remedy when pursuing trespass civil damages in federal or tribal court and an administrative appeal under 25 CFR part 2 as provided for in §§ 163.29 (f) and (g) of the proposed rule. We agree that the provisions of the proposed rule are cumbersome in this regard and have revised § 163.29 of the rule so that the administrative appeal remedy in 25 CFR part 2 only applies to seizure of trespass products still situated on an Indian reservation, where the seizure is initiated by federal officials. The revision provides that the remedy for challenging a federal seizure of trespass Indian products situated on an Indian reservation is exclusively within agency jurisdiction to ensure that a judicial proceeding could not proceed until completion of the 25 CFR part 2 process. The revision does not allow a tribal seizure through concurrent jurisdiction to be challenged separately through 25 CFR part 2. The revision provides that seizure of trespass forest products off-reservation is contingent upon other legal authority and that seizure of property or equipment used in trespass on Indian land is similarly restricted.

In recognition of this request for clarification of concurrent jurisdiction, the three categories of seizure have been expanded in the revision of § 163.29 to provide for dual federal and tribal procedures.

The comment further addresses the confusion inherent in the proposed regulation regarding concurrent trespass jurisdiction between the Bureau and tribes, and suggests redrafting to clarify. § 163.29 of the rule has been revised to clarify the interrelationship of the tribes and United States as to implementing concurrent jurisdiction, and the noted confusion has been eliminated. The intent of the revision is to implement Congress' grant of concurrent jurisdiction to qualifying tribes to pursue Indian trespass matters. At the suggestion of the commentor, the revision clarified that a tribe's exercise of the new, concurrent jurisdiction created through the National Indian Forest Resources Management Act and these regulations in no way affects any existing tribal authority to prosecute trespass matters. The revision provides that in cases where the Secretary defers to a tribe's exercise of its concurrent jurisdiction, the tribe rather than the United States would pursue and prosecute any tribal court litigation. In such cases, the United States would not appear as counsel, although BIA witnesses would be involved as appropriate. Tribal officials would not be acting on behalf of the United States, but on behalf of their separate jurisdiction granted by the National Indian Forest Resources Management Act. The revision adds further clarification consistent with these comments providing for discretionary United States' prosecution of Indian trespass matters in tribal courts in non-deferral situations. Also, seizure remedies in § 163.29 were revised to separate federal action from concurrent tribal action.

105. *Comment:* § 163.29 of the proposed rule should provide guidance on how to deal with trespass forest products located in different settings at time of trespass detection.

Response: Traditional judicial remedies are very different for dealing with trespass forest products located in different settings (e.g. in the woods, at a mill or buying station or after products have been converted and sold) at time of trespass detection. § 163.29 of the rule has been revised to provide more specific guidance on how to deal with trespass forest products located in different settings.

106. *Comment:* The provision of § 163.29(a)(1) of the proposed rule which applies the measure of damages in tribal law before applying state law is inconsistent with § 163.29(a)(2) of the proposed rule. Both should provide for the same priority of applicable law.

Response: § 163.29 of the rule has been revised to give tribal law precedence over state law so that provisions for applicable law for cases in tribal court and in Federal court are consistent.

107. *Comment:* What does the term ''enforce'' in the first sentence of § 163.29(f) of the proposed rule reference?

Response: The term ''enforce'' references the clarifying phrase ''against trespass'' in § 163.29 of the rule.

108. *Comment:* § 163.29(h) of the proposed rule seems to make the tribe responsible for the Bureau's regulations. Is this possible?

Response: § 163.29 of the rule allows either a tribe or the United States to assume control over enforcement/prosecution of a trespass.

163.31 Insect and Disease Control

109. *Comment:* Does § 163.31(a) of the rule require that the Secretary consult with the tribe to initiate insect and disease control measures on an allotment?

Response: § 163.31(a) of the rule requires that tribes be consulted in cases where control measures would be initiated on allotments within the reservation boundary.

163.32 Forest Development

110. *Comment:* Modify the first sentence in § 163.32 of the rule to state that both tribes and the Secretary may undertake activities to improve the productivity of commercial Indian forest land.

Response: The rule has not been revised because the wording of § 163.32 allows either the Secretary or the tribe to perform forest land management activities called for by the forest development program.

111. *Comment:* § 163.32 of the rule should be modified to emphasize that forest development activities can be applied to both timberland and woodland.

Response: The rule has not been revised because § 163.32 states that forest development pertains to forest land management activities undertaken on commercial Indian forest land. Since the definition of Indian forest land includes woodland, no change to emphasize applicability to woodland is needed.

112. *Comment:* § 163.32 of the rule should emphasize that forest land management activities undertaken in the forest development program be designed to improve sustained production of forest products on forest lands.

Response: The first sentence of § 163.32 has been revised to emphasize that forest development activities should be undertaken to improve the sustainable productivity of commercial Indian forest land.

113. *Comment:* The last sentence of § 163.32 of the rule should be modified to include environmental and ecological impact analyses as determinants in

establishing priorities for project funding.

Response: The rule has not been revised because § 163.32 provides sufficient flexibility to include determinants appropriate to a broad range of circumstances which may include environmental and ecological analysis.

163.33 Administrative Appeals

114. *Comment:* The commentor requests that § 163.33 of the rule establish criteria to tighten the legal standing required to file appeals. Specifically, the commentor suggests limiting standing to file administrative appeals to the recognized beneficial Indian tribe in the case of management on tribal trust status lands, to a majority interest of the heirs in the case of management actions on allotted trust land, and to timber sale contractors for actions taken in the administration of the terms of their timber sale contracts.

Response: The authors agree with the commentor in part; however, the commentor's suggested criteria to limit standing are too restrictive. Limiting standing to only a majority interest of the heirs in the case of management actions on allotted trust land is inappropriate. Instead, legal standing should be based on criteria as defined by earlier 25 CFR part 2 regulations which require an interested party to be an entity whose direct and substantive economic interest is adversely affected by a BIA action. § 163.33 of the rule has been revised to provide more explicit guidance on parties that have legal standing in the administrative appeals process.

115. *Comment:* The commentor requests clarification on § 163.33 of the rule in regards to the impact of staying appeals on contract execution and performance.

Response: Historically, BIA Area Offices have acted differently in regards to the issue of staying appeals. Some have allowed disputed actions to proceed (relief from stay) and others have not allowed disputed actions to proceed (not halting stay). § 163.33 of the rule provides that an administrative appeal of an action within these forestry regulations does not stay that action. To further clarify policy on staying appeals, § 163.33 of the rule has been revised to emphasize that appeals filed under 25 CFR part 2 shall not stay any action unless otherwise directed by the Secretary.

163.34 Environmental Compliance

116. *Comment:* § 163.34 of the rule should be modified to require consideration of environmental concerns of Indian communities.

Response: The rule has not been revised because the scoping process required by the National Environmental Policy Act (NEPA) embodied in the rule provides for an adequate means to identify and address environmental concerns of Indian communities.

117. *Comment:* § 163.34 of the rule should be revised to provide useful guidance on how to achieve compliance with NEPA by identifying which program actions usually require environmental impact statements or environmental assessments and which are normally categorically excluded from NEPA requirements.

Response: The rule has not been revised because existing Departmental (516 DM 1–7) and Bureau of Indian Affairs Environmental Program manuals (30 BIAM Supplemental 1) provide the needed policy guidance and including the requested guidance is outside the scope of this rule.

118. *Comment:* § 163.34 of the rule should require that actions taken under the rule explicitly require compliance with applicable tribal environmental laws and regulations rather than merely requiring use of such laws and regulations for guidance.

Response: § 163.34 of the rule has been revised to emphasize that actions taken by the Secretary under the regulations in this part must comply with the National Environmental Policy Act of 1969, Council on Environmental Quality regulations and applicable tribal laws and regulations.

163.35 Indian Forest Land Assistance Account

119. *Comment:* § 163.35 of the rule should provide guidelines to assure the equitable distribution of funds into forest land assistance accounts at multi-tribe agencies.

Response: The rule has not been revised because distribution of funds is a procedural process which is more appropriately addressed in the BIA forestry manual.

120. *Comment:* What are acceptable sources of funding for deposit into Indian forest land assistance accounts addressed in § 163.35 of the rule?

Response: The rule has not been revised because § 163.35 of the rule provides the comprehensive list of funding sources which can be deposited into Indian forest land assistance accounts identified in 25 U.S.C. 3109.

121. *Comment:* The reference to a tribe's trust fund account in § 163.35(a) of the rule is technically incorrect. Such accounts should be referred to as tribal accounts within the trust fund system.

Response: § 163.35(a) of the rule has been revised to reflect the technically correct accounting terminology.

122. *Comment:* Modify § 163.35(b) of the rule to reflect the existence of both forest transportation and general forest land management accounts.

Response: § 163.35(b) of the rule has been revised to reflect the existence of both forest transportation and general forest land management accounts.

123. *Comment:* Modify § 163.35(c) of the rule to reflect the existence of both forest transportation and general forest land management accounts.

Response: § 163.35(c) of the rule has been revised to reflect the existence of both forest transportation and general forest land management accounts.

124. *Comment:* Remove reference to a tribe's organization code in § 163.35(d) of the rule because such reference is limiting and adds unnecessary procedural detail to the rule.

Response: The rule has been revised to delete the reference to the tribe's organization code from § 163.35(c) to clarify the rule by removing unnecessary procedural detail.

125. *Comment:* Modify § 163.35(h) of the rule to remove reference to the annual audit performed by the Secretary to oversee trust funds. That function is separate and distinct from the 25 U.S.C. 3109 requirement to audit Indian forest land assistance accounts and should be deleted.

Response: § 163.35(h) of the rule has been revised to delete the reference to the Secretary's annual audit to oversee trust funds to clarify the requirement to audit Indian forest land assistance accounts in 25 U.S.C. 3109.

163.36 Tribal Forestry Program Financial Support

126. *Comment:* § 163.36 of the rule should provide for giving category 2 and 3 reservations with Tribal forestry programs a higher priority in funding.

Response: The rule has not been revised because the funding allocation system in §§ 163.36 (f) and (g) provide for equity in distribution of funds appropriated for tribal forestry program financial support and emphasizes allocation of funds to locations with the greatest resource management needs. Further, category 2 and 3 reservations which do not qualify for funding as individual locations can form cooperatives to qualify for the highest level of funding under § 163.36(c) of the rule.

127. *Comment:* Level one funding assistance provided for in § 163.36(e)(1) is insufficient to employ and support an experienced forester.

Response: The rule has not been revised because forestry program management experience of tribes and the Bureau is that the base funding assistance provided for in § 163.36(e)(1) is adequate to employ and support a professional forester. Also, if the minimum funding assistance provided was increased, fewer tribes would benefit from the program.

128. *Comment:* Given that one of the variables to determine eligibility for tribal forestry financial support is the allowable annual cut, would a reservation lose funding provided under § 163.36 if they did not harvest timber in a given year?

Response: Funding would not be lost if harvest did not occur. If a reservation qualifies under the criteria established in § 163.36 and funds are appropriated for tribal forestry program financial support, the program will be funded regardless of harvest activity in a given year.

129. *Comment:* Can public domain allotments in Alaska qualify for tribal forestry program financial support funding under § 163.36 of the rule?

Response: Alaska Native allottees could qualify for tribal forestry program financial support if they formed cooperatives and such cooperatives met qualification criteria set forth in § 163.36 of the rule.

Subpart C—Forestry Education, Education Assistance, Recruitment and Training

163.40 Indian and Alaska Native Forestry Education Assistance

130. *Comment:* § 163.40 of the rule should provide for standardization of salary and benefits for participants in the forester intern and cooperative education programs and should provide a housing allowance for students in the cooperative education program.

Response: The rule has not been revised because it provides for and standardizes salary and benefits to the extent the National Indian Forest Resources Management Act allows. Also, salary and benefits of program participants are regulated by other Federal statutes and regulations which address personnel management.

131. *Comment:* The education committee provided for by § 163.40(a)(1) of the rule should be comprised of a minimum of two instead of one Indian or Alaska Native members.

Response: The rule has not been revised because the intent of the program is to provide the maximum funds possible for Indian and Alaska Native forestry students. The four person committee provided for in § 163.40(a)(1) of the rule is believed to be adequate to conduct program business. Therefore, increasing program overhead and associated costs would contradict the program intent to provide the maximum funds possible for Indian and Alaska Native forestry students. If the number of committee members stipulated is inadequate to complete required program work, the number of committee members may be increased at the discretion of the Secretary.

132. *Comment:* The scope of the intern program provided for in § 163.40(b) of the rule should be increased to provide training needed to develop forestry technicians as well as professional resource managers.

Response: The rule has not been revised because the purpose of the intern program is to develop professional Indian foresters and resource managers which, historically, have been in critically short supply.

133. *Comment:* § 163.40(b) of the rule should provide for establishing regional quotas for intern program positions to ensure that all areas receive their fair share.

Response: The rule has not been revised because the education committee provided for in § 163.40(a)(1) of the rule can develop criteria other than merit and past performance to ensure fairness and equity in selection for the program.

134. *Comment:* § 163.40(b)(1)(ii) of the rule should be modified to encourage Indians and Alaska Natives in the intern program to include courses on indigenous culture related to their field of study.

Response: § 163.40(b)(1)(ii) of the rule has been revised to emphasize that courses on indigenous culture related to their field of study could be included in the curriculum of interns.

135. *Comment:* Shouldn't the term ''articulation'' in § 163.40(d)(5) of the rule be ''matriculation''?

Response: Even though use of the term ''articulation'' in § 163.40(d)(5) of the rule is correct, the rule has been revised to delete the word from the rule and add the minimum requirements of such agreements to the rule for the purpose of clarification.

136. *Comment:* § 163.40(e)(1)(ii) of the rule should be modified to promote forestry career awareness that includes both native indigenous and modern forest technologies.

Response: § 163.40(e)(1)(ii) of the rule has been revised to emphasize the need for both native indigenous and modern technologies in forestry career awareness programs.

137. *Comment:* § 163.40(f)(3) of the rule should be modified to encourage Indians and Alaska Natives in the postgraduate studies program to choose a research topic that will include native indigenous knowledge and technologies applied to forestry.

Response: The rule has not been revised because including the suggested language as a requirement of the postgraduate study program in 163.40(f)(3) of the rule would be inappropriate.

Subpart D—Alaska Native Technical Assistance Program

163.60 Purpose and Scope

138. *Comment:* Include the forest land management activity objectives enumerated in § 163.3(b) of the rule in § 163.60 of the rule.

Response: The rule has not been revised because the purpose of § 163.60 of the rule is to provide policy guidance for the administration of the Alaska Native Technical Assistance Program, not to reiterate the objectives of forest land management activities.

139. *Comment:* Broaden the scope of the definition of technical assistance in § 163.60(a) to include all forest land management activities as defined in § 163.1 Definitions of the rule.

Response: The rule has not been revised because including all forest land management activities as defined in § 163.1 of the rule would expand technical assistance activities far beyond those envisioned by 25 U.S.C. 3112.

140. *Comment:* Funding appropriated for managing Alaska Native forest lands should be comparable to that appropriated for the management of Indian forest land in the lower 48.

Response: The rule has not been revised because the issue of appropriations is outside the scope of the rule. Congress has discretionary authority for appropriating funds for the Alaska Native technical assistance program.

141. *Comment:* The definition of technical assistance in § 163.60(a) should be modified to allow ANCSA corporations to engage in on-the-ground field activities necessary to managing forest resources on their lands.

Response: The rule has not been revised because the definition in § 163.60(a) of the rule is sufficiently flexible to provide for the activities envisioned by 25 U.S.C. 3112 needed to promote sustained yield management of ANCSA forest resources, local processing and other value added activities with such forest resources. Further, the definition does not prohibit on-the-ground activities so long as such activities are required to promote

sustained yield management of ANCSA forest resources, local processing and other value-added activities.

Subpart F—Program Assessment

163.82 Annual Status Report

142. *Comment:* In § 163.82 of the rule delete the requirement to report the value of timber available for sale and the condition to report required information only for lands managed under an approved forest management plan.

Response: The reporting requirements in § 163.82 of the rule have been changed to conform with reporting requirements stipulated in 25 U.S.C. 3111(c) so the change requested by the comment has been made.

III. Findings and Certifications

The major purpose of the revision has been to provide uniform Indian forestry program operating policy that complies with the National Indian Forest Resources Management Act.

The Department has certified to the Office of Management and Budget (OMB) that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These regulations have no preemptive or retroactive effect.

The Department of the Interior has determined that this rule is not a significant regulatory action under Executive Order 12866, and therefore will not be reviewed by the Office of Management and Budget.

In accordance with E.O. 12630, the Department has determined that this rule does not have significant takings implications.

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The proposed 25 CFR part 163, General Forest Regulations, will have a positive impact on small business entities. Section 163.13, Indian tribal forest enterprise operations, § 163.14, Sale of forest products, and § 163.22, Payment for forest products provide streamlined rules for the sale and collection of proceeds from the sale of Indian forest products. The rule should benefit both Indian and non-Indian forest product businesses on and adjacent to Indian lands by simplifying sale procedures and improving cash flow to Tribes engaged in forest product industry. Further, the rule will provide a means to deliver technical assistance to Alaska Native Regional and Village Corporations to promote and develop value-added forest product industry. Such assistance will create a positive impact by facilitating initiation of new, small forest product businesses and enhancing existing enterprises. Other than these positive effects, the rule will not cause significant impacts to small business entities because other sections of the rule serve to affirm uniform Indian forest resource management standards, policy and procedures which have been in effect for many years.

The Department has determined that this rule does not have significant federalism effects.

The Department has determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The primary author of this document is Mr. Jim Stires, Forester, in the Billings Area Office, Bureau of Indian Affairs, Branch of Forestry, Billings, Montana.

List of Subjects in 25 CFR Part 163

Forests and forest products; Indian lands; education.

For the reasons set forth in the preamble, part 163 of Title 25 of the Code of Federal Regulations is revised as set forth below.

PART 163—GENERAL FORESTRY REGULATIONS

Subpart A—General Provisions

Sec.

Subpart B—Forest Management and Operations

Subpart C—Forestry Education, Education Assistance, Recruitment and Training

Subpart D—Alaska Native Technical Assistance Program

Subpart E—Cooperative Agreements

Subpart F—Program Assessment

Authority: 25 U.S.C. 2, 5, 9, 13, 406, 407, 413, 415, 466; and 3101–3120.

Subpart A—General Provisions

§ 163.1 Definitions.

Advance deposits means, in Timber Contract for the Sale of Estimated Volumes, contract-required deposits in advance of cutting which the purchaser furnishes to maintain an operating balance against which the value of timber to be cut will be charged.

Advance payments means, in Timber Contract for the Sale of Estimated Volumes, non-refundable partial payments of the estimated value of the timber to be cut. Payments are furnished within 30 days of contract approval and prior to cutting. Advance payments are normally 25 percent of the estimated value of the forest products on each allotment. Advance payments may be required for tribal land.

Alaska Native means native as defined in section 3(b) of the Alaska

Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1604).

ANCSA corporation means both profit and non-profit corporations established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1604).

Approval means authorization by the Secretary, Area Director, Superintendent, tribe or individual Indian in accordance with appropriate delegations of authority.

Approving officer means the officer approving instruments of sale for forest products or his/her authorized representative.

Authorized representative means an individual or entity duly empowered to make decisions under a direct, clear, and specific delegation of authority.

Authorized tribal representative means an individual or entity duly empowered to make decisions under a direct, clear, and specific delegation of authority from an Indian tribe.

Beneficial owner means an individual or entity who holds an ownership interest in Indian land.

Bid deposit means, in Timber Contract for the Sale of Estimated Volumes or in Timber Contract for the Sale of Predetermined Volumes, a deposit with bid furnished by prospective purchasers. At contract execution, the bid deposit of the successful bidder becomes a portion of the contract required advance deposit in estimated volume contracts or an installment payment in predetermined volume contracts.

Commercial forest land means forest land that is producing or capable of producing crops of marketable forest products and is administratively available for intensive management and sustained production.

Expenditure plan means a written agreement between an Indian tribe and the Secretary documenting tribal commitment to undertake specified forest land management activities within general time frames.

Forest or forest land means an ecosystem at least one acre in size, including timberland and woodland, which: Is characterized by a more or less dense and extensive tree cover; contains, or once contained, at least ten percent tree crown cover, and is not developed or planned for exclusive non-forest resource use.

Forest land management activities means all activities performed in the management of Indian forest land including:

(a) All aspects of program administration and executive direction such as:

(1) Development and maintenance of policy and operational procedures, program oversight, and evaluation;

(2) Securing of legal assistance and handling of legal matters;

(3) Budget, finance, and personnel management; and

(4) Development and maintenance of necessary data bases and program reports.

(b) All aspects of the development, preparation and revision of forest inventory and management plans, including aerial photography, mapping, field management inventories and re-inventories, inventory analysis, growth studies, allowable annual cut calculations, environmental assessment, and forest history, consistent with and reflective of tribal integrated resource management plans where such plans exist.

(c) Forest land development, including forestation, thinning, tree improvement activities, and the use of silvicultural treatments to restore or increase growth and yield to the full productive capacity of the forest environment.

(d) Protection against losses from wildfire, including acquisition and maintenance of fire fighting equipment and fire detection systems, construction of fire breaks, hazard reduction, prescribed burning, and the development of cooperative wildfire management agreements.

(e) Protection against insects and disease, including:

(1) All aspects of detection and evaluation;

(2) Preparation of project proposals containing project descriptions, environmental assessments and statements, and cost- benefit analyses necessary to secure funding;

(3) Field suppression operations and reporting.

(f) Assessment of damage caused by forest trespass, infestation or fire, including field examination and survey, damage appraisal, investigation assistance and report, demand letter, and testimony preparation.

(g) All aspects of the preparation, administration, and supervision of timber sale contracts, paid and free use permits, and other Indian forest product harvest sale documents, including;

(1) Cruising, product marketing, silvicultural prescription, appraisal and harvest supervision;

(2) Forest product marketing assistance, including evaluation of marketing and development opportunities related to Indian forest products and consultation and advice to tribes, tribal and Indian enterprises on maximization of return on forest products;

(3) Archeological, historical, environmental and other land management reviews, clearances, and analyses;

(4) Advertising, executing, and supervising contracts;

(5) Marking and scaling of timber; and

(6) Collecting, recording and distributing receipts from sales.

(h) Provision of financial assistance for the education of Indians and Alaska Natives enrolled in accredited programs of postsecondary and postgraduate forestry and forestry-related fields of study, including the provision of scholarships, internships, relocation assistance, and other forms of assistance to cover educational expenses.

(i) Participation in the development and implementation of tribal integrated resource management plans, including activities to coordinate current and future multiple uses of Indian forest lands.

(j) Improvement and maintenance of extended season primary and secondary Indian forest land road systems.

(k) Research activities to improve the basis for determining appropriate management measures to apply to Indian forest land.

Forest management deduction means a percentage of the gross proceeds from the sales of forest products harvested from Indian land which is collected by the Secretary pursuant to 25 U.S.C. 413 to cover in whole or in part the cost of managing and protecting such Indian forest lands.

Forest management plan means the principal document, approved by the Secretary, reflecting and consistent with an integrated resource management plan, which provides for the regulation of the detailed, multiple-use operation of Indian forest land by methods ensuring that such lands remain in a continuously productive state while meeting the objectives of the tribe and which shall include: Standards setting forth the funding and staffing requirements necessary to carry out each management plan, with a report of current forestry funding and staffing levels; and standards providing quantitative criteria to evaluate performance against the objectives set forth in the plan.

Forest products means marketable products extracted from Indian forests, such as: Timber; timber products, including lumber, lath, crating, ties, bolts, logs, pulpwood, fuelwood, posts, poles, and split products; bark; Christmas trees, stays, branches, firewood, berries, mosses, pinyon nuts, roots, acorns, syrups, wild rice,

mushrooms, and herbs; other marketable material; and gravel which is extracted from, and utilized on, Indian forest land.

Forestry-related field or *forestry-related curriculum* means a renewable natural resource management field necessary to manage Indian forest land and other professionally recognized fields as approved by the education committee established pursuant to § 163.40(a)(1).

Forest resources means all the benefits derived from Indian forest land, including forest products, soil productivity, water, fisheries, wildlife, recreation, and aesthetic or other traditional values of Indian forest land.

Forester intern means an Indian or Alaska Native who: Is employed as a forestry or forestry-related technician with the Bureau of Indian Affairs, an Indian tribe, or tribal forest-related enterprise; is acquiring necessary academic qualifications to become a forester or a professional trained in forestry-related fields; and is appointed to one of the Forester Intern positions established pursuant to § 163.40(b).

Indian means a member of an Indian tribe.

Indian enterprise means an enterprise which is designated as such by the Secretary or tribe.

Indian forest land means Indian land, including commercial, non-commercial, productive and non-productive timberland and woodland, that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless of whether a formal inspection and land classification action has been taken.

Indian land means land title which is held by: The United States in trust for an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally-recognized Indian tribe, or an Indian tribe; or by an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally recognized tribe, or an Indian tribe subject to a restriction by the United States against alienation.

Indian tribe or *tribe* means any Indian tribe, band, nation, rancheria, Pueblo or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and shall mean, where appropriate, the recognized tribal government of such tribe's reservation.

Installment payments means, in Timber Contract for the Sale of Predetermined Volumes, scheduled partial payments of the total contract value based on purchaser bid. Payments made are normally not refundable.

Integrated resource management plan means a document, approved by an Indian tribe and the Secretary, which provides coordination for the comprehensive management of the natural resources of such tribe's reservation.

Noncommercial forest land means forest land that is available for extensive management, but is incapable of producing sustainable forest products within the general rotation period. Such land may be economically harvested, but the site quality does not warrant significant investment to enhance future crops.

Productive forest land means forest land producing or capable of producing marketable forest products that is unavailable for harvest because of administrative restrictions or because access is not practical.

Reservation means an Indian reservation established pursuant to treaties, Acts of Congress, or Executive Orders and public domain Indian allotments, Alaska Native allotments, rancherias, and former Indian reservations in Oklahoma.

Secretary means the Secretary of the Interior or his or her authorized representative.

Stumpage rate means the stumpage value per unit of measure for a forest product.

Stumpage value means the value of a forest product prior to extraction from Indian forest land.

Sustained yield means the yield of forest products that a forest can produce continuously at a given intensity of management.

Timberland means forest land stocked, or capable of being stocked, with tree species that are regionally utilized for lumber, pulpwood, poles or veneer products.

Trespass means the removal of forest products from, or damaging forest products on, Indian forest land, except when authorized by law and applicable federal or tribal regulations. Trespass can include any damage to forest resources on Indian forest land resulting from activities under contracts or permits or from fire.

Tribal forest enterprise means an Indian enterprise that is initiated and organized by a reservation's recognized tribal government.

Unproductive forest land means forest land that is not producing or capable of producing marketable forest products and is also unavailable for harvest because of administrative restrictions or because access is not practical.

Woodland means forest land not included within the timberland classification, stocked, or capable of being stocked, with tree species of such form and size to produce forest products that are generally marketable within the region for products other than lumber, pulpwood, or veneer.

§ 163.2 Information collection.

The information collection requirements contained in 25 CFR part 163 do not require the approval of the Office of Management and Budget under 44 U.S.C. 3504(h) et seq.

§ 163.3 Scope and objectives.

(a) The regulations in this part are applicable to all Indian forest land except as this part may be superseded by legislation.

(b) Indian forest land management activities undertaken by the Secretary shall be designed to achieve the following objectives:

(1) The development, maintenance and enhancement of Indian forest land in a perpetually productive state in accordance with the principles of sustained yield and with the standards and objectives set forth in forest management plans by providing effective management and protection through the application of sound silvicultural and economic principles to the harvesting of forest products, forestation, timber stand improvement and other forestry practices;

(2) The regulation of Indian forest land through the development and implementation, with the full and active consultation and participation of the appropriate Indian tribe, of forest management plans which are supported by written tribal objectives;

(3) The regulation of Indian forest land in a manner that will ensure the use of good method and order in harvesting so as to make possible, on a sustained yield basis, continuous productivity and a perpetual forest business;

(4) The development of Indian forest land and associated value-added industries by Indians and Indian tribes to promote self-sustaining communities, so that Indians may receive from their Indian forest land not only stumpage value, but also the benefit of all the labor and profit that such Indian forest land is capable of yielding;

(5) The retention of Indian forest land in its natural state when an Indian tribe determines that the recreational, cultural, aesthetic, or traditional values of the Indian forest land represents the highest and best use of the land;

(6) The management and protection of forest resources to retain the beneficial

effects to Indian forest land of regulating water run-off and minimizing soil erosion; and

(7) The maintenance and improvement of timber productivity, grazing, wildlife, fisheries, recreation, aesthetic, cultural and other traditional values.

§ 163.4 Secretarial recognition of tribal laws.

Subject to the Secretary's trust responsibilities, and unless otherwise prohibited by Federal statutory law, the Secretary shall comply with tribal laws pertaining to Indian forest land, including laws regulating the environment or historic or cultural preservation, and shall cooperate with the enforcement of such laws on Indian forest land. Such cooperation does not constitute a waiver of United States sovereign immunity and shall include:

(a) Assistance in the enforcement of such laws;

(b) Provision of notice of such laws to persons or entities undertaking activities on Indian forest land; and

(c) Upon the request of an Indian tribe, the appearance in tribal forums.

Subpart B—Forest Management and Operations

§ 163.10 Management of Indian forest land.

(a) The Secretary shall undertake forest land management activities on Indian forest land, either directly or through contracts, cooperative agreements, or grants under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended).

(b) Indian forest land management activities undertaken by the Secretary shall be designed to achieve objectives enumerated in § 163.3 of this part.

§ 163.11 Forest management planning and sustained yield management.

(a) To further the objectives identified in § 163.3 of this part, an appropriate forest management plan shall be prepared and revised as needed for all Indian forest lands. Such documents shall contain a statement describing the manner in which the policies of the tribe and the Secretary will be applied, with a definite plan of silvicultural management, analysis of the short term and long term effects of the plan, and a program of action, including a harvest schedule, for a specified period in the future. Forest management plans shall be based on the principle of sustained yield management and objectives established by the tribe and will require approval of the Secretary.

(b) Forest management planning for Indian forest land shall be carried out through participation in the development and implementation of integrated resource management plans which provide coordination for the comprehensive management of all natural resources on Indian land. If the integrated resource management planning process has not been initiated, or is not ongoing or completed, a stand-alone forest management plan will be prepared.

(c) The harvest of forest products from Indian forest land will be accomplished under the principles of sustained yield management and will not be authorized until practical methods of harvest based on sound economic and silvicultural and other forest management principles have been prescribed. Harvest schedules will be prepared for a specified period of time and updated annually. Such schedules shall support the objectives of the beneficial land owners and the Secretary and shall be directed toward achieving an approximate balance between net growth and harvest at the earliest practical time.

§ 163.12 Harvesting restrictions.

(a) Harvesting timber on commercial forest land will not be permitted unless provisions for natural and/or artificial reforestation of acceptable tree species is included in harvest plans.

(b) Clearing of large contiguous areas will be permitted only on land that, when cleared, will be devoted to a more beneficial use than growing timber crops. This restriction shall not prohibit clearcutting when it is silviculturally appropriate, based on ecological principles, to harvest a particular stand of timber by such method and it otherwise conforms with objectives in § 163.3 of this part.

§ 163.13 Indian tribal forest enterprise operations.

Indian tribal forest enterprises may be initiated and organized with consent of the authorized tribal representatives. Such enterprises may contract for the purchase of non-Indian owned forest products. Subject to approval by the Secretary the following actions may be taken:

(a) Authorized tribal enterprises may enter into formal agreements with tribal representatives for the use of tribal forest products, and with individual beneficial Indian owners for their forest products;

(b) Authorized officials of tribal enterprises, operating under approved agreements for the use of Indian-owned forest products pursuant to this section, may sell the forest products produced according to generally accepted trade practices;

(c) With the consent of the beneficial Indian owners, such enterprises may, without advertisement, contract for the purchase of forest products on Indian land at stumpage rates authorized by the Secretary;

(d) Determination of and payment for stumpage and/or products utilized by such enterprises will be authorized in accordance with § 163.22. However, the Secretary may issue special instructions for payment by methods other than those in § 163.22 of this part; and

(e) Performance bonds may or may not be required in connection with operations on Indian land by such enterprises as determined by the Secretary.

§ 163.14 Sale of forest products.

(a) Consistent with the economic objectives of the tribe and with the consent of the Secretary and authorized by tribal resolution or resolution of recognized tribal government, open market sales of Indian forest products may be authorized. Such sales require consent of the authorized representatives of the tribe for the sale of tribal forest products, and the owners of a majority Indian interest on individually owned lands. Open market sales of forest products from Indian land located off reservations will be permitted with the consent of the Secretary and majority Indian interest of the beneficial Indian owner(s).

(b) On individually owned Indian forest land not formally designated for retention in its natural state, the Secretary may, after consultation, sell the forest products without the consent of the owner(s) when in his or her judgment such action is necessary to prevent loss of value resulting from fire, insects, diseases, windthrow or other catastrophes.

(c) Unless otherwise authorized by the Secretary, each sale of forest products having an estimated stumpage value exceeding $15,000 will not be approved until:

(1) An examination of the forest products to be sold has been made by a forest officer; and

(2) A report setting forth all pertinent information has been submitted to the approving officer as provided in § 163.20 of this part.

(d) With the approval of the Secretary, authorized beneficial Indian owners who have been duly apprised as to the value of the forest products to be sold, may sell or transfer forest products for less than the appraised value.

(e) Except as provided in § 163.14(d) of this part, in all such sales, the forest products shall be appraised and sold at

stumpage rates not less than those established by the Secretary.

§ 163.15 Advertisement of sales.

Except as provided in §§ 163.13, 163.14, 163.16, and 163.26 of this part, sales of forest products shall be made only after advertising.

(a) The advertisement shall be approved by the officer who will approve the instrument of sale. Advertised sales shall be made under sealed bids, or at public auction, or under a combination thereof. The advertisement may limit sales of Indian forest products to Indian forest enterprises, members of the tribe, or may grant to Indian forest enterprises and/or members of the tribe who submitted bids the right to meet the higher bid of a non-member. If the estimated stumpage value of the forest products offered does not exceed $15,000, the advertisement may be made by posters and circular letters. If the estimated stumpage value exceeds $15,000, the advertisement shall also be made in at least one edition of a newspaper of general circulation in the locality where the forest products are situated. If the estimated stumpage value does not exceed $50,000, the advertisement shall be made for not less than 15 days; if the estimated stumpage value exceeds $50,000 but not $250,000, for not less than 30 days; and if the estimated stumpage value exceeds $250,000, for not less than 60 days.

(b) The approving officer may reduce the advertising period because of emergencies such as fire, insect attack, blowdown, limitation of time, or when there would be no practical advantage in advertising for the prescribed period.

(c) If no instrument of sale is executed after such advertisement, the approving officer may, within one year from the last day on which bids were to be received as defined in the advertisement, permit the sale of such forest products. The sale will be made upon the terms and conditions in the advertisement and at not less than the advertised value or the appraised value at the time of sale, whichever is greater.

§ 163.16 Forest product sales without advertisement.

(a) Sales of forest products may be made without advertisement to Indians or non-Indians with the consent of the authorized tribal representatives for tribal forest products or with the consent of the beneficial owners of a majority Indian interest of individually owned Indian land, and the approval of the Secretary when:

(1) Forest products are to be cut in conjunction with the granting of a right-of-way;

(2) Granting an authorized occupancy;

(3) Tribal forest products are to be purchased by an Indian tribal forest enterprise;

(4) It is impractical to secure competition by formal advertising procedures;

(5) It must be cut to protect the forest from injury; or

(6) Otherwise specifically authorized by law.

(b) The approving officer shall establish a documented record of each negotiated transaction. This will include:

(1) A written determination and finding that the transaction is a type allowing use of negotiation procedures;

(2) The extent of solicitation and competition, or a statement of the facts upon which a finding of impracticability of securing competition is based; and

(3) A statement of the factors on which the award is based, including a determination as to the reasonability of the price accepted.

§ 163.17 Deposit with bid.

(a) A deposit shall be made with each proposal for the purchase of Indian forest products. Such deposits shall be at least:

(1) Ten (10) percent if the appraised stumpage value is less than $100,000 and in any event not less than $1,000 or full value whichever is less;

(2) Five (5) percent if the appraised stumpage value is $100,000 to $250,000 but in any event not less than $10,000; and

(3) Three (3) percent if the appraised stumpage value exceeds $250,000 but in any event not less than $12,500.

(b) Deposits shall be in the form of either a certified check, cashier's check, bank draft, postal money order, or irrevocable letter-of-credit, drawn payable as specified in the advertisement, or in cash.

(c) The deposit of the apparent high bidder, and of others who submit a written request to have their bids considered for acceptance will be retained pending acceptance or rejection of the bids. All other deposits will be returned following the opening and posting of bids.

(d) The deposit of the successful bidder will be forfeited and distributed as damages to the beneficial owners if the bidder does not:

(1) Furnish the performance bond required by § 163.21 of this part within the time stipulated in the advertisement for sale of forest products;

(2) Execute the contract; or

(3) Perform the contract.

(e) Forfeiture of a deposit does not limit or waive any further claims for damages available under applicable law or terms of the contract.

(f) In the event of an administrative appeal under 25 CFR part 2, the Secretary may hold such bid deposits in an escrow account pending resolution of the appeal.

§ 163.18 Acceptance and rejection of bids.

(a) The high bid received in accordance with any advertisement issued under authority of this part shall be accepted, except that the approving officer, having set forth the reason(s) in writing, shall have the right to reject the high bid if:

(1) The high bidder is considered unqualified to fulfill the contractual requirement of the advertisement; or

(2) There are reasonable grounds to consider it in the interest of the Indians to reject the high bid.

(b) If the high bid is rejected, the approving officer may authorize:

(1) Rejection of all bids; or

(2) Acceptance of the offer of another bidder who, at bid opening, makes written request that their bid and bid deposit be held pending a bid acceptance.

(c) The officer authorized to accept the bid shall have the discretion to waive minor technical defects in advertisements and proposals, such as typographical errors and misplaced entries.

§ 163.19 Contracts for the sale of forest products.

(a) In sales of forest products with an appraised stumpage value exceeding $15,000, the contract forms approved by the Secretary must be used unless a special form for a particular sale or class of sales is approved by the Secretary.

(b) Unless otherwise directed, the contracts for forest products from individually-owned Indian land will be paid by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent. Upon the request of the tribe, the contracts for tribal forest products may require that the proceeds be paid promptly and directly into a bank depository account designated by such tribe, or by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent.

(c) By mutual agreement of the parties to a contract, contracts may be extended, modified, or assigned subject to approval by the approving officer, and may be terminated by the approving officer upon completion or by mutual agreement.

§ 163.20 Execution and approval of contracts.

(a) All contracts for the sale of tribal forest products shall be executed by the authorized tribal representative(s). There shall be included with the contract an affidavit executed by the authorized tribal representative(s) setting forth the resolution or other authority of the governing body of the tribe. Contracts must be approved by the Secretary to be valid.

(b) Contracts for the sale of individually owned forest products shall be executed by the beneficial Indian owner(s) or the Secretary acting pursuant to a power of attorney from the beneficial Indian owner(s). Contracts must be approved by the Secretary to be valid.

(1) The Secretary may, after consultation with any legally appointed guardian, execute contracts on behalf of minors and beneficial Indian owners who are non compos mentis.

(2) The Secretary may execute contracts for a decedent's estate where ownership has not been determined or for those persons who cannot be located after a reasonable and diligent search and the giving of notice by publication.

(3) Upon the request of the owner of an undivided but unrestricted interest in land in which there are trust or restricted Indian interests, the Secretary may include such unrestricted interest in a sale of the trust or restricted interests in the timber, pursuant to this part, and perform any functions required of him/her by the contract of sale for both the restricted and the unrestricted interests, including the collection and disbursement of payments for timber and the forest management deductions from such payments.

(4) When consent of only a majority interest has been obtained, the Secretary may execute the sale on behalf of all owners to fulfill responsibilities to the beneficiaries of the trust. In such event, the contract file must contain evidence of the effort to obtain consent of all owners. When an individual cannot be located, the Secretary, after a reasonable and diligent search and the giving of notice by publication, may sign a power of attorney consenting to the sale for particular interests. For Indian forest land containing undivided restricted and unrestricted interests, only the restricted interests are considered in determining if a majority interest has been obtained.

§ 163.21 Bonds required.

(a) Performance bonds will be required in connection with all sales of forest products, except they may or may not be required, as determined by the approving officer, in connection with the use of forest products by Indian tribal forest enterprises pursuant to this part in § 163.13 or in timber cutting permits issued pursuant to § 163.26 of this part.

(1) In sales in which the estimated stumpage value, calculated at the appraised stumpage rates, does not exceed $15,000, the bond shall be at least 20 percent of the estimated stumpage value.

(2) In sales in which the estimated stumpage value exceeds $15,000 but is not over $150,000, the bond shall be at least 15 percent of the estimated stumpage value but not less than $3,000.

(3) In sales in which the estimated stumpage value exceeds $150,000, but is not over $350,000, the bond shall be at least 10 percent of the estimated stumpage value but not less than $22,500.

(4) In sales in which the estimated stumpage value exceeds $350,000, the bond shall be at least 5 percent of the estimated stumpage value but not less than $35,000.

(b) Bonds shall be in a form acceptable to the approving officer and may include:

(1) A corporate surety bond by an acceptable surety company;

(2) A cash bond designating the approving officer to act as trustee under terms of an appropriate trust;

(3) Negotiable U.S. Government securities supported by an appropriate trust instrument; or

(4) An irrevocable letter of credit.

§ 163.22 Payment for forest products.

(a) The basis of volume determination for forest products sold shall be the Scribner Decimal C log rules, cubic volume, lineal measurement, piece count, weight, or such other form of measurement as the Secretary may authorize for use. With the exception of Indian tribal forest enterprises pursuant to § 163.13 of this part, payment for forest products will be required in advance of cutting for timber, or removal for other forest products.

(b) Upon the request of an Indian tribe, the Secretary may provide that the purchaser of the forest products of such tribe, which are harvested under a timber sale contract, permit, or other harvest sale document to make advanced deposits, or direct payments of the gross proceeds of such forest products, less any amounts segregated as forest management deductions pursuant to § 163.25 of this part, into accounts designated by such Indian tribe. Such accounts may be in one or more of the following formats:

(1) Escrow accounts at a tribally designated financial institution for receiving deposits with bids and advance deposits from which direct disbursements for timber harvested shall be made to tribes and forest management deductions accounts; or

(2) Tribal depository accounts for receiving advance payments, installment payments, payments from Indian tribal forest enterprises, and/or disbursements from advance deposit accounts or escrow accounts.

(c) The format must allow the Secretary to maintain trust responsibility through written verification that all required deposits, payments, and disbursements have been made.

(d) Terms and conditions for payment of forest products under lump sum (predetermined volume) sales shall be specified in forest product contract documents.

§ 163.23 Advance payment for timber products.

(a) Unless otherwise authorized by the Secretary, and except in the case of lump sum (predetermined volume) sales, contracts for the sale of timber from allotted, trust or restricted Indian forest land shall provide for an advance payment of up to 25 percent of the stumpage value, calculated at the bid price, within 30 days from the date of approval and before cutting begins. Additional advance payments may be specified in contracts. However, no advance payment will be required that would make the sum of such payment and of advance deposits and advance payments previously applied against timber cut from each ownership in a sale exceed 50 percent of the bid stumpage value. Advance payments shall be credited against the timber of each ownership in the sale as the timber is cut and scaled at stumpage rates governing at the time of scaling. Advance payments are not refundable.

(b) Advance payments may be required on tribal land. When required, advance payments will operate the same as provided for in § 163.23(a) of this part.

§ 163.24 Duration of timber contracts.

After the effective date of a forest product contract, unless otherwise authorized by the Secretary, the maximum period which shall be allowed for harvesting the estimated volume of timber purchased, shall be five years.

§ 163.25 Forest management deductions.

(a) Pursuant to the provisions of 25 U.S.C. 413 and 25 U.S.C. 3105, a forest

management deduction shall be withheld from the gross proceeds of sales of forest products harvested from Indian forest land as described in this section.

(b) Gross proceeds shall mean the value in money or money's worth of consideration furnished by the purchaser of forest products purchased under a contract, permit, or other document for the sale of forest products.

(c) Forest management deductions shall not be withheld where the total consideration furnished under a contract, permit or other document for the sale of forest products is less than $5,001.

(d) Except as provided in § 163.25(e) of this part, the amount of the forest management deduction shall not exceed the lesser amount of ten percent (10%) of the gross proceeds or, the actual percentage in effect on November 28, 1990.

(e) The Secretary may increase the forest management deduction percentage for Indian forest land upon receipt of a written request from a tribe supported by a resolution executed by the authorized tribal representatives. At the request of the authorized tribal representatives and at the discretion of the Secretary the forest management deduction percentage may be decreased to not less than one percent (1%) or the requirement for collection may be waived.

(f) Forest management deductions are to be utilized to perform forest land management activities in accordance with an approved expenditure plan. Expenditure plans shall describe the forest land management activities anticipated to be undertaken, establish a time period for their completion, summarize anticipated obligations and expenditures, and specify the method through which funds are to be transferred or credited to tribal accounts from special deposit accounts established to hold amounts withheld as forest management deductions. Any forest management deductions that have not been incorporated into an approved expenditure plan by the end of the fiscal year following the fiscal year in which the deductions are withheld, shall be collected into the general funds of the United States Treasury pursuant to 25 U.S.C. 413.

(1) For Indian forest lands located on an Indian reservation, a written expenditure plan for the use of forest management deductions shall be prepared annually and approved by the authorized tribal representative(s) and the Secretary. The approval of the expenditure plan by the authorized tribal representatives constitutes allocation of tribal funds for Indian forest land management activities. Approval of the expenditure plan by the Secretary shall constitute authority for crediting of forest management deductions to tribal account(s). The full amount of any deduction collected by the Secretary plus any income or interest earned thereon shall be available for expenditure according to the approved expenditure plan for the performance of forest land management activities on the reservation from which the forest management deduction is collected.

(2) Forest management deductions shall be handled in the same manner as described under § 163.25(f)(1) of this part if the expenditure plan approved by an Indian tribe and the Secretary provides for the conduct of forest land management activities on Indian forest lands located outside the boundaries of an Indian reservation.

(3) For public domain and Alaska Native allotments held in trust for Indians by the United States, forest management deductions may be utilized to perform forest land management activities on such lands in accordance with an expenditure plan approved by the Secretary.

(g) Forest management deductions withheld pursuant to this section shall not be available to cover the costs that are paid from funds appropriated for fire suppression or pest control or otherwise offset federal appropriations for meeting the Federal trust responsibility for management of Indian forest land.

(h) Within 120 days after the close of the tribal fiscal year, tribes shall submit to the Secretary a written report detailing the actual expenditure of forest management deductions during the past fiscal year. The Secretary shall have the right to inspect accounts, books, or other tribal records supporting the report.

(i) Forest management deductions incorporated into an expenditure plan approved by the Secretary shall remain available until expended.

(j) As provided in § 163.25(f) of this part, only forest management deductions that have not been incorporated into an approved expenditure plan may be deposited to a U.S. Treasury miscellaneous receipt account. No amount collected as forest management deductions shall be credited to any Federal appropriation. No other forest management deductions or fees derived from Indian forest land shall be collected to be covered into the general funds of the United States Treasury.

§ 163.26 Forest product harvesting permits.

(a) Except as provided in §§ 163.13 and 163.27 of this part, removal of forest products that are not under formal contract, pursuant to § 163.19, shall be under forest product harvesting permit forms approved by the Secretary. Permits will be issued only with the written consent of the beneficial Indian owner(s) or the Secretary, for harvest of forest products from Indian forest land, as authorized in § 163.20 of this part. To be valid, permits must be approved by the Secretary. Minimum stumpage rates at which forest products may be sold will be set at the time consent to issue the permit is obtained. Payment and bonding requirements will be stipulated in the permit document as appropriate.

(b) Free use harvesting permits issued shall specify species and types of forest products to be removed. It may be stipulated that forest products removed under this authority cannot be sold or exchanged for other goods or services. The estimated value which may be harvested in a fiscal year by any individual under this authority shall not exceed $5,000. For the purpose of issuance of free use permits, individual shall mean an individual Indian or any organized group of Indians.

(c) Paid permits subject to forest management deductions, as provided in § 163.25 of this part, may be issued. Unless otherwise authorized by the Secretary, the stumpage value which may be harvested under paid permits in a fiscal year by any individual under this authority shall not exceed $25,000. For the purpose of issuance of paid permits, individual shall mean an individual or any operating entity comprised of more than one individual.

(d) A Special Allotment Timber Harvest Permit may be issued to an Indian having sole beneficial interest in an allotment to harvest and sell designated forest products from his or her allotment. The special permit shall include provision for payment by the Indian of forest management deductions pursuant to § 163.25 of this part. Unless waived by the Secretary, the permit shall also require the Indian to make a bond deposit with the Secretary as required by § 163.21. Such bonds will be returned to the Indian upon satisfactory completion of the permit or will be used by the Secretary in his or her discretion for planting or other work to offset damage to the land or the timber caused by failure to comply with the provisions of the permit. As a condition to granting a special permit under authority of this paragraph, the Indian shall be required to provide evidence acceptable to the Secretary

that he or she has arranged a bona fide sale of the forest products, on terms that will protect the Indian's interests.

§ 163.27 Free-use harvesting without permits.

With the consent of the beneficial Indian owners and the Secretary, Indians may harvest designated types of forest products from Indian forest land without a permit or contract, and without charge. Forest products harvested under this authority shall be for the Indian's personal use, and shall not be sold or exchanged for other goods or services.

§ 163.28 Fire management measures.

(a) The Secretary is authorized to maintain facilities and staff, hire temporary labor, rent fire fighting equipment, purchase tools and supplies, and pay for their transportation as needed, to maintain an adequate level of readiness to meet normal wildfire protection needs and extinguish forest or range fires on Indian land. No expenses for fighting a fire outside Indian lands may be incurred unless the fire threatens Indian land or unless the expenses are incurred pursuant to an approved cooperative agreement with another protection agency. The rates of pay for fire fighters and for equipment rental shall be the rates for fire fighting services that are currently in use by public and private wildfire protection agencies adjacent to Indian reservations on which a fire occurs, unless there are in effect at the time different rates that have been approved by the Secretary. The Secretary may also enter into reciprocal agreements with any fire organization maintaining protection facilities in the vicinity of Indian reservations or other Indian land for mutual aid in wildfire protection. This section does not apply to the rendering of emergency aid, or agreements for mutual aid in fire protection pursuant to the Act of May 27, 1955 (69 Stat. 66).

(b) The Secretary is authorized to conduct a wildfire prevention program to reduce the number of person-caused fires and prevent damage to natural resources on Indian land.

(c) The Secretary is authorized to expend funds for emergency rehabilitation measures needed to stabilize soil and watershed on Indian land damaged by wildfire.

(d) Upon consultation with the beneficial Indian owners, the Secretary may use fire as a management tool on Indian land to achieve land and/or resource management objectives.

§ 163.29 Trespass.

(a) Trespassers will be liable for civil penalties and damages to the enforcement agency and the beneficial Indian owners, and will be subject to prosecution for acts of trespass.

(1) *Cases in Tribal Court.* For trespass actions brought in tribal court pursuant to these regulations, the measure of damages, civil penalties, remedies and procedures will be as set forth in this § 163.29 of this part. All other aspects of a tribal trespass prosecution brought under these regulations will be that prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, unless otherwise prescribed under federal law. Absent applicable tribal or federal law, the measure of damages shall be that prescribed by the law of the state in which the trespass was committed.

(2) *Cases in Federal Court.* For trespass actions brought in Federal court pursuant to these regulations, the measure of damages, civil penalties, remedies and procedures will be as set forth in this § 163.29. In the absence of applicable federal law, the measure shall be that prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, or in the absence of tribal law, the law of the state in which it was committed.

(3) Civil penalties for trespass include, but are not limited to:

(i) Treble damages, whenever any person, without lawful authority injures, severs, or carries off from a reservation any forest product as defined in § 163.1 of this part. Proof of Indian ownership of the premises and commission of the acts by the trespasser are prima facie evidence sufficient to support liability for treble damages, with no requirement to show willfulness or intent. Treble damages shall be based upon the highest stumpage value obtainable from the raw materials involved in the trespass.

(ii) Payment of costs associated with damage to Indian forest land includes, but is not limited to, rehabilitation, reforestation, lost future revenue and lost profits, loss of productivity, and damage to other forest resources.

(iii) Payment of all reasonable costs associated with the enforcement of these trespass regulations beginning with detection and including all processes through the prosecution and collection of damages, including but not limited to field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees.

(iv) Interest calculated at the statutory rate prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, or in the absence of tribal law in the amount prescribed by federal law. Where tribal law or federal law does not supply a statutory interest rate, the rate of interest shall be statutory rate upon judgments as prescribed by the law of the state in which the trespass was committed. Interest shall be based on treble the highest stumpage value obtainable from the raw materials involved in the trespass, and calculated from the date of the trespass until payment is rendered.

(b) Any cash or other proceeds realized from forfeiture of equipment or other goods or from forest products damaged or taken in the trespass shall be applied to satisfy civil penalties and other damages identified under § 163.29(a) of this part. After disposition of real and personal property to pay civil penalties and damages resulting from trespass, any residual funds shall be returned to the trespasser. In the event that collection and forfeiture actions taken against the trespasser result in less than full recovery, civil penalties shall be distributed as follows:

(1) Collection of damages up to the highest stumpage value of the trespass products shall be distributed pro rata between the Indian beneficial owners and any costs and expenses needed to restore the trespass land; or

(2) Collections exceeding the highest stumpage value of the trespass product, but less than full recovery, shall be proportionally distributed pro rata between the Indian beneficial owners, the law enforcement agency, and the cost to restore the trespass land. Forest management deductions shall not be withheld where less than the highest stumpage value of the unprocessed forest products taken in trespass has been recovered.

(c) Indian beneficial owners who trespass, or who are involved in trespass upon their own land, or undivided land in which such owners have a partial interest, shall not receive their beneficial share of any civil penalties and damages collected in consequence of the trespass. Any civil penalties and damages defaulted in consequence of this provision instead shall be distributed first toward restoration of the land subject of the trespass and second toward costs of the enforcement agency in consequence of the trespass, with any remainder to the forest management deduction account of the reservation in which the trespass took place.

(d) Civil penalties and other damages collected under these regulations, except for penalties and damages provided for in §§ 163.29(a)(3) (ii) and (iii) of this part, shall be treated as

proceeds from the sale of forest products from the Indian forest land upon which the trespass occurred.

(e) When a federal official or authorized tribal representative pursuant to § 163.29(j) of this part has reason to believe that Indian forest products are involved in trespass, such individual may seize and take possession of the forest products involved in the trespass if the products are located on reservation. When forest products are seized, the person seizing the products must at the time of the seizure issue a Notice of Seizure to the possessor or claimant of the forest products. The Notice of Seizure shall indicate the date of the seizure, a description of the forest products seized, the estimated value of forest products seized, an indication of whether the forest products are perishable, and the name and authority of the person seizing the forest products. Where the official initiates seizure under these regulations only, the Notice of Seizure shall further include the statement that any challenge or objection to the seizure shall be exclusively through administrative appeal pursuant to part 2 of Title 25, and shall provide the name and the address of the official with whom the appeal may be filed. Alternately, an official may exercise concurrent tribal seizure authority under these regulations using applicable tribal law. In such case, the Notice of Seizure shall identify the tribal law under which the seizure may be challenged, if any. A copy of a Notice of Seizure shall be given to the possessor or claimant at the time of the seizure. If the claimant or possessor is unknown or unavailable, Notice of Seizure shall be posted on the trespass property, and a copy of the Notice shall be kept with any incident report generated by the official seizing the forest products. If the property seized is perishable and will lose substantial value if not sold or otherwise disposed of, the representative of the Secretary, or authorized tribal representative where deferral has been requested, may cause the forest products to be sold. Such sale action shall not be stayed by the filing of an administrative appeal nor by a challenge of the seizure action through a tribal forum. All proceeds from the sale of the forest products shall be placed into an escrow account and held until adjudication or other resolution of the underlying trespass. If it is found that the forest products seized were involved in a trespass, the proceeds shall be applied to the amount of civil penalties and damages awarded. If it is found that a trespass has not occurred or the proceeds are in excess of the amount of the judgment awarded, the proceeds or excess proceeds shall be returned to the possessor or claimant.

(f) When there is reason to believe that Indian forest products are involved in trespass and that such products have been removed to land not under federal or tribal government supervision, the federal official or authorized tribal representative pursuant to § 163.29(k) of this part responsible for the trespass shall immediately provide the following notice to the owner of the land or the party in possession of the trespass products:

(1) That such products could be Indian trust property involved in a trespass; and

(2) That removal or disposition of the forest products may result in criminal and/or civil action by the United States or tribe.

(g) A representative of the Secretary or authorized tribal representative pursuant to § 163.29(j) of this part will promptly determine if a trespass has occurred. The appropriate representative will issue an official Notice of Trespass to the alleged trespasser and, if necessary, the possessor or potential buyer of any trespass products. The Notice is intended to inform the trespasser, buyer, or the processor:

(1) That a determination has been made that a trespass has occurred;

(2) The basis for the determination;

(3) An assessment of the damages, penalties and costs;

(4) Of the seizure of forest products, if applicable; and

(5) That disposition or removal of Indian forest products taken in the trespass may result in civil and/or criminal action by the United States or the tribe.

(h) The Secretary may accept payment of damages in the settlement of civil trespass cases. In the absence of a court order, the Secretary will determine the procedure and approve acceptance of any settlements negotiated by a tribe exercising its concurrent jurisdiction pursuant to § 163.29(j) of this part.

(i) The Secretary may delegate by written agreement or contract, responsibility for detection and investigation of forest trespass.

(j) Indian tribes that adopt the regulations set forth in this section, conformed as necessary to tribal law, shall have concurrent civil jurisdiction to enforce 25 U.S.C. 3106 and this section against any person.

(1) The Secretary shall acknowledge said concurrent civil jurisdiction over trespass, upon:

(i) Receipt of a formal tribal resolution documenting the tribe's adoption of this section; and

(ii) Notification of the ability of the tribal court system to properly adjudicate forest trespass cases, including a statement that the tribal court will enforce the Indian Civil Rights Act or a tribal civil rights law that contains provisions for due process and equal protection that are similar to or stronger than those contained in the Indian Civil Rights Act.

(2) Where an Indian tribe has acquired concurrent civil jurisdiction over trespass cases as set forth in § 163.29(j)(1) of this part, the Secretary and tribe's authorized representatives will be jointly responsible to coordinate prosecution of trespass actions. The Secretary shall, upon timely request of the tribe, defer prosecution of forest trespasses to the tribe. Where said deferral is not requested, the designated Bureau of Indian Affairs forestry trespass official shall coordinate with the authorized forest trespass official of each tribe the exercise of concurrent tribal and Federal trespass jurisdiction as to each trespass. Such officials shall review each case, determine in which forums to recommend bringing an action, and promptly provide their recommendation to the Federal officials responsible for initiating and prosecuting forest trespass cases. Where an Indian tribe has acquired concurrent civil jurisdiction, but does not request deferral of prosecution, the federal officials responsible for initiating and prosecuting such cases may file and prosecute the action in the tribal court or forum.

(3) The Secretary may rescind an Indian tribe's concurrent civil jurisdiction over trespass cases under this regulation if the Secretary or a court of competent jurisdiction determines that the tribal court has not adhered to the due process or equal protection requirements of the Indian Civil Rights Act. If it is determined that said rescission is justified, the Secretary shall provide written Notice of the rescission, including the findings justifying the rescission and the steps needed to remedy the violations causing the rescission, to the chief judge of the tribal judiciary or other authorized tribal official should there be no chief judge. If said steps are not taken within 60 days, the Secretary's rescission of concurrent civil jurisdiction shall become final. The affected tribe(s) may appeal a Notice of Rescission under part 2 of Title 25.

(4) Nothing shall be construed to prohibit or in any way diminish the authority of a tribe to prosecute

individuals under its criminal or civil trespass laws where it has jurisdiction over those individuals.

§ 163.30 Revocable road use and construction permits for removal of commercial forest products.

(a) In accordance with 25 U.S.C. 415 as amended, the Secretary may request tribes and/or other beneficial owners to sign revocable permits designating the Secretary as agent for the landowner and empowering him or her to issue revocable road use and construction permits to users for the purpose of removing forest products.

(b) When a majority of trust interest in a tract has consented, the Secretary may issue revocable road use and construction permits for removal of forest products over and across such land. In addition, the Secretary may act for individual owners when:

(1) One or more of the individual owner(s) of the land or of an interest therein is a minor or a person non compos mentis, and the Secretary finds that such grant, in total or for an interest therein, will cause no substantial injury to the land or the owner, which cannot be adequately compensated for by monetary damages;

(2) The whereabouts of the owner(s) of the land or those with an interest therein are unknown so long as the majority of owner(s) of interests whose whereabouts are known, consent to the grant;

(3) The heirs or devisees of a deceased owner of the land or interest have not been determined, and the Secretary finds the grant will cause no substantial injury to the land or any land owner; or

(4) The owners of interests in the land are so numerous that the Secretary finds it would be impractical to obtain the consent of the majority and finds that such grant in total or an interest therein will cause no substantial injury to the land or the owner(s), that cannot be adequately compensated for by monetary damages.

(c) Nothing in this section shall preclude acquisition of rights-of-way over Indian lands, under 25 CFR part 169, or conflict with provisions of that part.

§ 163.31 Insect and disease control.

(a) The Secretary is authorized to protect and preserve Indian forest land from disease or insects (Sept. 20, 1922, Ch. 349, 42 Stat. 857). The Secretary shall consult with the authorized tribal representatives and beneficial owners of Indian forest land concerning control actions.

(b) The Secretary is responsible for controlling and mitigating harmful effects of insects and diseases on Indian forest land and will coordinate control actions with the Secretary of Agriculture in accordance with 92 Stat. 365, 16 U.S.C. 2101.

§ 163.32 Forest development.

Forest development pertains to forest land management activities undertaken to improve the sustainable productivity of commercial Indian forest land. The program shall consist of reforestation, timber stand improvement projects, and related investments to enhance productivity of commercial forest land with emphasis on accomplishing on-the-ground projects. Forest development funds will be used to re-establish, maintain, and/or improve growth of commercial timber species and control stocking levels on commercial forest land. Forest development activities will be planned and executed using benefit-cost analyses as one of the determinants in establishing priorities for project funding.

§ 163.33 Administrative appeals.

Any challenge to action under 25 CFR part 163 taken by an approving officer or subordinate official exercising delegated authority from the Secretary shall be exclusively through administrative appeal or as provided in the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended). Such appeal(s) shall be filed in accordance with the provisions of 25 CFR part 2, Appeals from administrative actions, except that an appeal of any action under part 163 of this title shall:

(a) Not stay any action unless otherwise directed by the Secretary; and

(b) Define ''interested party'' for purposes of bringing such an appeal or participating in such an appeal as any person whose own direct economic interest is adversely affected by an action or decision.

§ 163.34 Environmental compliance.

Actions taken by the Secretary under the regulations in this part must comply with the National Environmental Policy Act of 1969, applicable Council on Environmental Quality Regulations, and tribal laws and regulations.

§ 163.35 Indian forest land assistance account.

(a) At the request of a tribe's authorized representatives, the Secretary may establish tribal-specific forest land assistance accounts within the trust fund system.

(b) Deposits shall be credited either to forest transportation or to general forest land management accounts.

(c) Deposits into the accounts may include:

(1) Funds from non-federal sources related to activities on or for the Indian forest land of such tribe's reservation;

(2) Donations or contributions;

(3) Unobligated forestry appropriations for the tribe;

(4) User fees; and

(5) Funds transferred under Federal interagency agreements if otherwise authorized by law.

(d) For purposes of § 163.35(c)(3) of this part; unobligated forestry appropriations shall consist of balances that remain unobligated at the end of the fiscal year(s) for which funds are appropriated for the benefit of an Indian tribe.

(e) Funds in the Indian forest land assistance account plus any interest or other income earned shall remain available until expended and shall not be available to otherwise offset Federal appropriations for the management of Indian forest land.

(f) Funds in the forest land assistance account shall be used only for forest land management activities on the reservation for which the account is established.

(g) Funds in a tribe's forest land assistance account shall be expended in accordance with a plan approved by the tribe and the Secretary.

(h) The Secretary may, where circumstances warrant, at the request of the tribe, or upon the Secretary's own volition, conduct audits of the forest land assistance accounts and shall provide the audit results of to the tribe(s).

§ 163.36 Tribal forestry program financial support.

(a) The Secretary shall maintain a program to provide financial support to qualifying tribal forestry programs. A qualifying tribal forestry program is an organization or entity established by a tribe for purposes of carrying out forest land management activities. Such financial support shall be made available through the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended).

(b) The authorized tribal representatives of any category 1, 2, or 3 reservation (as defined under § 163.36(b)(1)–(3)) with an established tribal forestry program or with an intent to establish such a program for the purpose of carrying out forest land management activities may apply and qualify for tribal forestry program financial support. Reservation categories, as determined by the Secretary, are defined as:

(1) Category 1 includes major forested reservations comprised of more than 10,000 acres of trust or restricted commercial timberland or having more than a one million board foot harvest of forest products annually.

(2) Category 2 includes minor forested reservations comprised of less than 10,000 acres of trust or restricted commercial timberland and having less than a one million board foot harvest of forest products annually, or whose forest resource is determined by the Secretary to be of significant commercial timber value.

(3) Category 3 includes significant woodland reservations comprised of an identifiable trust or restricted forest area of any size which is lacking a timberland component, and whose forest resource is determined by the Secretary to be of significant commercial woodland value.

(c) A group of tribes that has either established or intends to establish a cooperative tribal forestry program to provide forest land management services to their reservations may apply and qualify for tribal forestry program financial support. For purposes of financial support under this provision, the cooperative tribal forestry program and the commercial forest acreage and annual allowable cut which it represents may be considered as a single reservation.

(d) Before the beginning of each Federal fiscal year, tribes applying to qualify for forestry program financial support shall submit application packages to the Secretary which:

(1) Document that a tribal forestry program exists or that there is an intent to establish such a program;

(2) Describe forest land management activities and the time line for implementing such activities which would result from receiving tribal forestry program financial support; and

(3) Document commitment to sustained yield management.

(e) Tribal forestry program financial support shall provide professional and technical services to carry out forest land management activities and shall be based on levels of funding assistance as follows:

(1) Level one funding assistance shall be equivalent to a Federal Employee General Pay Schedule GS 9 step 5 position salary plus an additional 40 percent of the annual salary for such a position to pay for fringe benefits and support costs;

(2) Level two funding assistance shall be equivalent to an additional Federal Employee General Pay Schedule GS 9 step 5 position salary plus an additional 40 percent of the annual salary for such a position to pay for fringe benefits and support costs; and

(3) Level three funding assistance shall be based on equal distribution of remaining funds among qualifying applicants.

(f) Determination of qualification for level of funding assistance shall be as follows:

(1) A funding level qualification value shall be determined for each eligible applicant using the formula below. Such formula shall only be used to determine which applicants qualify for level one funding assistance. Acreage and allowable cut data used in the formula shall be as maintained by the Secretary. Eligible applicants with a funding level qualification value of one (1) or greater shall qualify for level one assistance.

Funding Level Qualification Formula

$$\left[\frac{.5\times CA}{\text{Tot. CA}}+\frac{.5\times AAC}{\text{Tot. AAC}}\right]\times 1000$$

where:

CA=applicant's total commercial Indian forest land acres;

Tot. CA=national total commercial Indian forest land acres;

AAC=applicant's total allowable annual cut from commercial Indian forest land acres; and

Tot. AAC=national total allowable annual cut from commercial Indian forest land acres.

(2) All category 1 or 2 reservations that are eligible applicants under § 163.36(d) of this part are qualified and eligible for level two assistance.

(3) All category 1, 2 or 3 reservations that are eligible applicants under § 163.36(d) of this part are qualified and eligible for level three assistance.

(g) Tribal forestry program financial support funds shall be distributed based on the following:

(1) All requests from reservations qualifying for level one funding assistance must be satisfied before funds are made available for level two funding assistance;

(2) All requests from reservations qualifying for level two funding assistance must be satisfied before funds are made available for level three funding assistance; and

(3) If available funding is not adequate to satisfy all requests at a particular level of funding, funds will be evenly divided among tribes qualifying at that level.

§ 163.37 Forest management research.

The Secretary, with the consent of the authorized Indian representatives' is authorized to perform forestry research activities to improve the basis for determining appropriate land management activities to apply to Indian forest land.

Subpart C—Forestry Education, Education Assistance, Recruitment and Training

§ 163.40 Indian and Alaska Native forestry education assistance.

(a) *Establishment and evaluation of the forestry education assistance programs.* (1) The Secretary shall establish within the Bureau of Indian Affairs Division of Forestry an education committee to coordinate and implement the forestry education assistance programs and to select participants for all the forestry education assistance programs with the exception of the cooperative education program. This committee will be, at a minimum, comprised of a professional educator, a personnel specialist, an Indian or Alaska Native who is not employed by the Bureau of Indian Affairs, and a professional forester from the Bureau of Indian Affairs.

(2) The Secretary, through the Bureau of Indian Affairs Division of Forestry, shall monitor and evaluate the forestry education assistance programs to ensure that there are adequate Indian and Alaska Native foresters and forestry-related professionals to manage the Bureau of Indian Affairs forestry programs and forestry programs maintained by or for tribes and ANCSA Corporations. Such monitoring and evaluating shall identify the number of participants in the intern, cooperative education, scholarship, and outreach programs; the number of participants who completed the requirements to become a professional forester or forestry-related professional; and the number of participants completing advanced degree requirements.

(b) *Forester intern program.* (1) The purpose of the forester intern program is to ensure the future participation of trained, professional Indians and Alaska Natives in the management of Indian and Alaska Native forest land. In keeping with this purpose, the Bureau of Indian Affairs in concert with tribes and Alaska Natives will work:

(i) To obtain the maximum degree of participation from Indians and Alaska Natives in the forester intern program;

(ii) To encourage forester interns to complete an undergraduate degree program in a forestry or forestry-related field which could include courses on indigenous culture; and

(iii) To create an opportunity for the advancement of forestry and forestry-related technicians to professional resource management positions with the

Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The Secretary, through the Bureau of Indian Affairs Division of Forestry, subject to the availability of personnel resource levels established in agency budgets, shall establish and maintain in the Bureau of Indian Affairs at least 20 positions for the forester intern program. All Indians and Alaska Natives who satisfy the qualification criteria in § 163.40(b)(3) of this part may compete for such positions.

(3) To be considered for selection, applicants for forester intern positions must meet the following criteria:

(i) Be eligible for Indian preference as defined in 25 CFR, part 5 subchapter A;

(ii) Possess a high school diploma or its recognized equivalent;

(iii) Be able to successfully complete the intern program within a three year maximum time period; and

(iv) Possess a letter of acceptance to an accredited post-secondary school or demonstrate that such a letter of acceptance will be acquired within 90 days.

(4) The Bureau of Indian Affairs shall advertise vacancies for forester intern positions semiannually, no later than the first day of April and October, to accommodate entry into school.

(5) Selection of forester interns will be based on the following guidelines:

(i) Selection will be on a competitive basis selecting applicants who have the greatest potential for success in the program;

(ii) Selection will take into consideration the amount of time which will be required for individual applicants to complete the intern program;

(iii) Priority in selection will be given to candidates currently employed with and recommended for participation by the Bureau of Indian Affairs, a tribe, a tribal forest enterprise or ANCSA Corporation; and

(iv) Selection of individuals to the program awaiting the letter of acceptance required by § 163.40(b)(3)(iv) of this part may be canceled if such letter of acceptance is not secured and provided to the education committee in a timely manner.

(6) Forester interns shall comply with each of the following program requirements:

(i) Maintain full-time status in a forestry related curriculum at an accredited post-secondary school having an agreement which assures the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry related program at a bachelor degree granting institution accredited by the American Association of Universities;

(ii) Maintain good academic standing;

(iii) Enter into an obligated service agreement to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, the recommending tribe, tribal forest enterprise or ANCSA Corporation for two years for each year in the program; and

(iv) Report for service with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation during any break in attendance at school of more than three weeks duration. Time spent in such service shall be counted toward satisfaction of the intern's obligated service.

(7) The education committee established pursuant to § 163.40(a)(1) of this part will evaluate annually the performance of forester intern program participants against requirements enumerated in § 163.40(b)(6) of this part to ensure that they are satisfactorily progressing toward completing program requirements.

(8) The Secretary shall pay all costs for tuition, books, fees and living expenses incurred by a forester intern while attending an accredited post-secondary school.

(c) *Cooperative education program.* (1) The purpose of the cooperative education program is to recruit and develop promising Indian and Alaska Native students who are enrolled in secondary schools, tribal or Alaska Native community colleges, and other post-secondary schools for employment as professional foresters and other forestry-related professionals by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The program shall be operated by the Bureau of Indian Affairs Division of Forestry in accordance with the provisions of 5 CFR 213.3202(a) and 213.3202(b).

(3) To be considered for selection, applicants for the cooperative education program must meet the following criteria:

(i) Meet eligibility requirements stipulated in 5 CFR 213.3202;

(ii) Be accepted into or enrolled in a course of study at a high school offering college preparatory course work, an accredited institution which grants bachelor degrees in forestry or forestry-related curriculums or a post-secondary education institution which has an agreement with a college or university which grants bachelor degrees in forestry or forestry-related curriculums. The agreement must assure the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry related program at the bachelor degree-granting institution.

(4) Cooperative education steering committees established at the field level shall select program participants based on eligibility requirements stipulated in § 163.40(c)(3) of this part without regard to applicants' financial needs.

(5) A recipient of assistance under the cooperative education program shall be required to enter into an obligated service agreement to serve as a professional forester or forestry- related professional with the Bureau of Indian Affairs, a recommending tribe, tribal forest enterprise or ANCSA Corporation for one year in return for each year in the program.

(6) The Secretary shall pay all costs of tuition, books, fees, and transportation to and from the job site to school, for an Indian or Alaska Native student who is selected for participation in the cooperative education program.

(d) *Scholarship program.* (1) The Secretary is authorized, within the Bureau of Indian Affairs Division of Forestry, to establish and grant forestry scholarships to Indians and Alaska Natives enrolled in accredited programs for post-secondary and graduate forestry and forestry-related programs of study as full-time students.

(2) The education committee established pursuant to this part in § 163.40(a)(1) shall select program participants based on eligibility requirements stipulated in §§ 163.40(d)(5), 163.40(d)(6) and 163.40(d)(7) without regard to applicants' financial needs or past scholastic achievements.

(3) Recipients of scholarships must reapply annually to continue funding beyond the initial award period. Students who have been recipients of scholarships in past years, who are in good academic standing and have been recommended for continuation by their academic institution will be given priority over new applicants for selection for scholarship assistance.

(4) The amount of scholarship funds an individual is awarded each year will be contingent upon the availability of funds appropriated each fiscal year and, therefore, may be subject to yearly changes.

(5) Preparatory scholarships are available for a maximum of two and one half academic years of general, undergraduate course work leading to a degree in forestry or forestry-related curriculums and may be awarded to individuals who meet the following criteria:

(i) Must possess a high school diploma or its recognized equivalent; and

(ii) Be enrolled and in good academic standing or accepted for enrollment at an accredited post-secondary school which grants degrees in forestry or forestry-related curriculums or be in a post-secondary institution which has an agreement with a college or university which grants bachelor degrees in forestry or forestry-related curriculums. The agreement must assure the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry-related curriculum at the bachelor degree granting institution.

(6) Pregraduate scholarships are available for a maximum of three academic years and may be awarded to individuals who meet the following criteria:

(i) Have completed a minimum of 55 semester hours towards a bachelor degree in a forestry or forestry-related curriculum; and

(ii) Be accepted into a forestry or forestry-related bachelor degree-granting program at an accredited college or university.

(7) Graduate scholarships are available for a maximum of three academic years for individuals selected into the graduate program of an accredited college or university that grants advanced degrees in forestry or forestry-related fields.

(8) A recipient of assistance under the scholarship program shall be required to enter into an obligated service agreement to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation for one year for each year in the program.

(9) The Secretary shall pay all scholarships approved by the education committee established pursuant to this part in § 163.40(a)(1), for which funding is available.

(e) *Forestry education outreach.* (1) The Secretary shall establish and maintain a forestry education outreach program within the Bureau of Indian Affairs Division of Forestry for Indian and Alaska Native youth which will:

(i) Encourage students to acquire academic skills needed to succeed in post-secondary mathematics and science courses;

(ii) Promote forestry career awareness that could include modern technologies as well as native indigenous forestry technologies;

(iii) Involve students in projects and activities oriented to forestry related professions early so students realize the need to complete required precollege courses; and

(iv) Integrate Indian and Alaska Native forestry program activities into the education of Indian and Alaska Native students.

(2) The program shall be developed and carried out in consultation with appropriate community education organizations, tribes, ANCSA Corporations, and Alaska Native organizations.

(3) The program shall be coordinated and implemented nationally by the education committee established pursuant to § 163.40(a)(1) of this part.

(f) *Postgraduate studies.* (1) The purpose of the postgraduate studies program is to enhance the professional and technical knowledge of Indian and Alaska Native foresters and forestry-related professionals working for the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporations so that the best possible service is provided to Indian and Alaska Native publics.

(2) The Secretary is authorized to pay the cost of tuition, fees, books and salary of Alaska Natives and Indians who are employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation who have previously received diplomas or degrees in forestry or forestry-related curriculums and who wish to pursue advanced levels of education in forestry or forestry-related fields.

(3) Requirements of the postgraduate study program are:

(i) The goal of the advanced study program is to encourage participants to obtain additional academic credentials such as a degree or diploma in a forestry or forestry-related field;

(ii) The duration of course work cannot be less than one semester or more than three years; and

(iii) Students in the postgraduate studies program must meet performance standards as required by the graduate school offering the study program during their course of study.

(4) Program applicants will submit application packages to the education committee established by § 163.40(a)(1). At a minimum, such packages shall contain a complete SF 171 and an endorsement, signed by the applicant's supervisor clearly stating the needs and benefits of the desired training.

(5) The education committee established pursuant to § 163.40(a)(1) shall select program participants based on the following criteria:

(i) Need for the expertise sought at both the local and national levels;

(ii) Expected benefits, both to the location and nationally; and

(iii) Years of experience and the service record of the employee.

(6) Program participants will enter into an obligated service agreement in accordance with § 163.42(a), to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation for two years for each year in the program. However, the obligated service requirement may be reduced by the Secretary if the employee receives supplemental funding such as research grants, scholarships or graduate stipends and, as a result, reduces the need for financial assistance. If the obligated service agreement is breached, the Secretary is authorized to pursue collection in accordance with § 163.42(b) of this part.

§ 163.41 Postgraduation recruitment, continuing education and training programs.

(a) *Postgraduation recruitment program.* (1) The purpose of the postgraduation recruitment program is to recruit Indian and Alaska Native graduate foresters and trained forestry technicians into the Bureau of Indian Affairs forestry program or forestry programs conducted by a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The Secretary is authorized to assume outstanding student loans from established lending institutions of Indian and Alaska Native foresters and forestry technicians who have successfully completed a post-secondary forestry or forestry- related curriculum at an accredited institution.

(3) Indian and Alaska Natives receiving benefits under this program shall enter into an obligated service agreement in accordance with § 163.42(a) of this part. Obligated service required under this program will be one year for every $5,000 of student loan debt repaid.

(4) If the obligated service agreement is breached, the Secretary is authorized to pursue collection of the student loan(s) in accordance with § 163.42(b) of this part.

(b) *Postgraduate intergovernmental internships.* (1) Forestry personnel working for the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation may apply to the Secretary and be granted an internship within forestry-related programs of agencies of the Department of the Interior.

(2) Foresters or forestry-related personnel from other Department of the Interior agencies may apply through

proper channels for internships within Bureau of Indian Affairs forestry programs and, with the consent of a tribe or Alaska Native organization, within tribal or Alaska Native forestry programs.

(3) Forestry personnel from agencies not within the Department of the Interior may apply, through proper agency channels and pursuant to an interagency agreement, for an internship within the Bureau of Indian Affairs and, with the consent of a tribe or Alaska Native organization, within a tribe, tribal forest enterprise or ANCSA Corporation.

(4) Forestry personnel from a tribe, tribal forest enterprise or ANCSA Corporation may apply, through proper channels and pursuant to a cooperative agreement, for an internship within another tribe, tribal forest enterprise or ANCSA Corporation forestry program.

(5) The employing agency of participating Federal employees will provide for the continuation of salary and benefits.

(6) The host agency for participating tribal, tribal forest enterprise or ANCSA Corporation forestry employees will provide for salaries and benefits.

(7) A bonus pay incentive, up to 25 percent of the intern's base salary, may be provided to intergovernmental interns at the conclusion of the internship period. Bonus pay incentives will be at the discretion of and funded by the host organization and will be conditioned upon the host agency's documentation of the intern's superior performance, in accordance with the agency's performance standards, during the internship period.

(c) *Continuing education and training.* (1) The purpose of continuing education and training is to establish a program to provide for the ongoing education and training of forestry personnel employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation. This program will emphasize continuing education and training in three areas:

(i) Orientation training, including tribal-Federal relations and responsibilities;

(ii) Technical forestry education; and

(iii) Developmental training in forest land-based enterprises and marketing.

(2) The Secretary shall implement within the Bureau of Indian Affairs Division of Forestry, an orientation program designed to increase awareness and understanding of Indian culture and its effect on forest management practices and on Federal laws that affect forest management operations and administration in the Indian forestry program.

(3) The Secretary shall implement within the Bureau of Indian Affairs Division of Forestry, a continuing technical forestry education program to assist foresters and forestry-related professionals to perform forest management on Indian forest land.

(4) The Secretary shall implement, within the Bureau of Indian Affairs Division of Forestry, a forest land-based forest enterprise and marketing training program to assist with the development and use of Indian and Alaska Native forest resources.

§ 163.42 Obligated service and breach of contract.

(a) *Obligated service.* (1) Individuals completing forestry education programs with an obligated service requirement may be offered full time permanent employment with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation to fulfill their obligated service within 90 days of the date all program education requirements have been completed. If such employment is not offered within the 90-day period, the student shall be relieved of obligated service requirements. Not less than 30 days prior to the commencement of employment, the employer shall notify the participant of the work assignment, its location and the date work must begin. If the employer is other than the Bureau of Indian Affairs, the employer shall notify the Secretary of the offer for employment.

(2) Qualifying employment time eligible to be credited to fulfilling the obligated service requirement will begin the day after all program education requirements have been completed, with the exception of the forester intern program, which includes the special provisions outlined in § 163.40(b)(6)(iv). The minimum service obligation period shall be one year of full-time employment.

(3) The Secretary or other qualifying employer reserves the right to designate the location of employment for fulfilling the service obligation.

(4) A participant in any of the forestry education programs with an obligated service requirement who receives a degree may, within 30 days of the degree completion date, request a deferment of obligated service to pursue postgraduate or postdoctoral studies. In such cases, the Secretary shall issue a decision within 30 days of receipt of the request for deferral. The Secretary may grant such a request, however, deferments granted in no way waive or otherwise affect obligated service requirements.

(5) A participant in any of the forestry education programs with an obligated service requirement may, within 30 days of the date all program education requirements have been completed, request a waiver of obligated service based on personal or family hardship. The Secretary may grant a full or partial waiver or deny the request for waiver. In such cases, the Secretary shall issue a decision within 30 days of receipt of the request for waiver.

(b) *Breach of contract.* Any individual who has participated in and accepted financial support under forestry education programs with an obligated service requirement and who does not accept employment or unreasonably terminates such employment by their own volition will be required to repay financial assistance as follows:

(1) *Forester intern program*—Amount plus interest equal to the sum of all salary, tuition, books, and fees that the forester intern received while occupying the intern position. The amount of salary paid to the individual during breaks in attendance from school, when the individual was employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise, or ANCSA Corporation, shall not be included in this total.

(2) *Cooperative education program*—Amount plus interest equal to the sum of all tuition, books, and fees that the individual received under the cooperative education program.

(3) *Scholarship program*—Amount plus interest equal to scholarship(s) provided to the individual under the scholarship program.

(4) *Postgraduation recruitment program*—Amount plus interest equal to the sum of all the individual's student loans assumed by the Secretary under the postgraduation recruitment program.

(5) *Postgraduate studies program*—Amount plus interest equal to the sum of all salary, tuition, books, and fees that the individual received while in the postgraduate studies program. The amount of salary paid to that individual during breaks in attendance from school, when the individual was employed by the Bureau of Indian Affairs, a tribe, a tribal enterprise, or ANCSA Corporation, shall not be included in this total.

(c) *Adjustment of repayment for obligated service performed.* Under forestry education programs with an obligated service requirement, the amount required for repayment will be adjusted by crediting time of obligated service performed prior to breach of contract toward the final amount of debt.

Subpart D—Alaska Native Technical Assistance Program

§ 163.60 Purpose and scope.

(a) The Secretary shall provide a technical assistance program to ANCSA corporations to promote sustained yield management of their forest resources and, where practical and consistent with the economic objectives of the ANCSA Corporations, promote local processing and other value-added activities. For the purpose of this subpart, technical assistance means specialized professional and technical help, advice or assistance in planning, and providing guidance, training and review for programs and projects associated with the management of, or impact upon, Indian forest land, ANCSA corporation forest land, and their related resources. Such technical assistance shall be made available through contracts, grants or agreements entered into in accordance with the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended).

(b) Nothing in this part shall be construed as: Affecting, modifying or increasing the responsibility of the United States toward ANCSA corporation forest land, or affecting or otherwise modifying the Federal trust responsibility towards Indian forest land; or requiring or otherwise mandating an ANCSA corporation to apply for a contract, grant, or agreement for technical assistance with the Secretary. Such applications are strictly voluntary.

§ 163.61 Evaluation committee.

(a) The Secretary shall establish an evaluation committee to assess and rate technical assistance project proposals. This committee will include, at a minimum, local Bureau of Indian Affairs and Alaska Native representatives with expertise in contracting and forestry.

§ 163.62 Annual funding needs assessment and rating.

(a) Each year, the Secretary will request a technical assistance project needs assessment from ANCSA corporations. The needs assessments will provide information on proposed project goals and estimated costs and benefits and will be rated by the evaluation committee established pursuant to § 163.61 for the purpose of making funding recommendations to the Secretary. To the extent practicable, such recommendations shall achieve an equitable funding distribution between large and small ANCSA corporations and shall give priority for continuation of previously approved multi-year projects.

(b) Based on the recommendations of the evaluation committee, the Secretary shall fund such projects, to the extent available appropriations permit.

§ 163.63 Contract, grant, or agreement application and award process.

(a) At such time that the budget for ANCSA corporation technical assistance projects is known, the Secretary shall advise the ANCSA corporations on which projects were selected for funding and on the deadline for submission of complete and detailed contract, grant or agreement packages.

(b) Upon the request of an ANCSA corporation and to the extent that funds and personnel are available, the Bureau of Indian Affairs shall provide technical assistance to ANCSA corporations to assist them with:

(1) Preparing the technical parts of the contract, grant, or agreement application; and

(2) Obtaining technical assistance from other Federal agencies.

Subpart E—Cooperative Agreements

§ 163.70 Purpose of agreements.

(a) To facilitate administration of the programs and activities of the Department of the Interior, the Secretary is authorized to negotiate and enter into cooperative agreements between Indian tribes and any agency or entity within the Department. Such cooperative agreements include engaging tribes to undertake services and activities on all lands managed by Department of the Interior agencies or entities or to provide services and activities performed by these agencies or entities on Indian forest land to:

(1) Engage in cooperative manpower and job training and development programs;

(2) Develop and publish cooperative environmental education and natural resource planning materials; and

(3) Perform land and facility improvements, including forestry and other natural resources protection, fire protection, reforestation, timber stand improvement, debris removal, and other activities related to land and natural resource management.

(b) The Secretary may enter into such agreements when he or she determines the public interest will be benefited. Nothing in § 163.70(a) shall be construed to limit the authority of the Secretary to enter into cooperative agreements otherwise authorized by law.

§ 163.71 Agreement funding.

In cooperative agreements, the Secretary is authorized to advance or reimburse funds to contractors from any appropriated funds available for similar kinds of work or by furnishing or sharing materials, supplies, facilities, or equipment without regard to the provisions of 31 U.S.C. 3324, relating to the advance of public moneys.

§ 163.72 Supervisory relationship.

In any agreement authorized by the Secretary, Indian tribes and their employees may perform cooperative work under the supervision of the Department of the Interior in emergencies or otherwise, as mutually agreed to, but shall not be deemed to be Federal employees other than for purposes of 28 U.S.C. 2671 through 2680, and 5 U.S.C. 8101 through 8193.

Subpart F—Program Assessment

§ 163.80 Periodic assessment report.

The Secretary shall commission every ten years an independent assessment of Indian forest land and Indian forest land management practices under the guidelines established in § 163.81 of this part.

(a) Assessments shall be conducted in the first year of each decade (e.g., 2000, 2010, etc.) and shall be completed within 24 months of their initiation date. Each assessment shall be initiated no later than November 28 of the designated year.

(b) Except as provided in § 163.83 of this part, each assessment shall be conducted by a non-Federal entity knowledgeable of forest management practices on Federal and private land. Assessments will evaluate and compare investment in and management of Indian forest land with similar Federal and private land.

(c) Completed assessment reports shall be submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Select Committee on Indian Affairs of the United States Senate and shall be made available to Indian tribes.

§ 163.81 Assessment guidelines.

Assessments shall be national in scope and shall include:

(a) An in-depth analysis of management practices on, and the level of funding by management activity for, specific Indian forest land compared with similar Federal and private forest land;

(b) A survey of the condition of Indian forest land, including health and productivity levels;

(c) An evaluation of the staffing patterns, by management activity, of

forestry organizations of the Bureau of Indian Affairs and of Indian tribes;

(d) An evaluation of procedures employed in forest product sales administration, including preparation, field supervision, and accountability for proceeds;

(e) An analysis of the potential for streamlining administrative procedures, rules and policies of the Bureau of Indian Affairs without diminishing the Federal trust responsibility;

(f) A comprehensive review of the intensity and utility of forest inventories and the adequacy of Indian forest land management plans, including their compatibility with other resource inventories and applicable integrated resource management plans and their ability to meet tribal needs and priorities;

(g) An evaluation of the feasibility and desirability of establishing or revising minimum standards against which the adequacy of the forestry program of the Bureau of Indian Affairs in fulfilling its trust responsibility to Indian forest land can be measured;

(h) An evaluation of the effectiveness of implementing the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended) in regard to the Bureau of Indian Affairs forestry program;

(i) A recommendation of any reforms and increased funding and other resources necessary to bring Indian forest land management programs to a state-of-the-art condition; and

(j) Specific examples and comparisons from across the United States where Indian forest land is located.

§ 163.82 Annual status report.

The Secretary shall, within 6 months of the end of each fiscal year, submit to the Committee on Interior and Insular Affairs of the United States House of Representatives, the Select Committee on Indian Affairs of the United States Senate, and to the affected Indian tribes, a report on the status of Indian forest land with respect to attaining the standards, goals and objectives set forth in approved forest management plans. The report shall identify the amount of Indian forest land in need of forestation or other silvicultural treatment, and the quantity of timber available for sale, offered for sale, and sold, for each Indian tribe.

§ 163.83 Assistance from the Secretary of Agriculture.

The Secretary of the Interior may ask the Secretary of Agriculture, through the Forest Service, on a nonreimbursable basis, for technical assistance in the conduct of such research and evaluation activities as may be necessary for the completion of any reports or assessments required by § 163.80 of this part.

Dated: July 14, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–24480 Filed 10–4–95; 8:45 am]

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Federal Register

Thursday
October 5, 1995

Part III

Department of Justice

Bureau of Prisons

28 CFR Part 549

Infectious Diseases; Interim Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 549

[BOP–1017–I]

RIN 1120–AA23

Infectious Diseases

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons adopts as interim regulations provisions for the correctional management of chronic infectious diseases. These provisions, with minor adjustments, extend the scope of the existing provisions for Human Immunodeficiency Virus (HIV) programs to encompass the correctional management of other chronic infectious diseases such as hepatitis and tuberculosis. The intended effect of these regulations is to provide for the continued care of inmates in the Bureau's custody and for the continued secure and orderly operation of the institution.

DATES: Effective October 5, 1995; comments must be submitted by December 4, 1995.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is adopting as interim regulations the following procedures for the management of infectious diseases in a correctional setting. A final rule on the management of human immunodeficiency virus (HIV) programs (28 CFR part 549, subpart A) was published in the Federal Register December 21, 1990 (55 FR 52826). These interim regulations represent a broadening of the existing provisions for HIV programs to encompass the management (e.g., mandatory testing requirements) of other chronic infectious diseases such as hepatitis and tuberculosis.

The existing provisions have been reorganized in order to clearly separate requirements specific to the HIV and to the hepatitis B virus (HBV) from requirements common to the management of other chronic infectious diseases.

Section 549.10 has been revised to state the regulations' common purpose of providing instruction and guidance in the management of infectious diseases in the confined environment of a correctional setting. The treatment and handling of routine infectious diseases continue to be covered by medical protocols and therefore are unaffected by the revised regulations.

The provisions in former § 549.11 relating to intake screening for HIV-infected inmates have been transferred to new § 549.18(a) and are discussed below. New § 549.11 is added detailing program administrative responsibilities.

The provisions in former § 549.12 on housing have been transferred to new § 549.16 and are discussed below. New § 549.12 is added to detail administrative requirements for state health department reporting requirements and to reference further provisions specific to chronic infectious diseases.

The provisions in former § 549.13 on precautionary measures for the use of communal implements have been removed. The Bureau believes such measures are more suitably addressed in implementing instructions to staff. This allows for greater flexibility in following updated guidance on this subject from the Centers for Disease Control.

A new § 549.13 is added containing provisions on medical testing. Paragraph (a) of new § 549.13 contains new provisions for testing of inmates following a bloodborne pathogen exposure incident. Such testing requires the written, informed consent of the inmate, except if the test is ordered by a court with proper jurisdiction. Under paragraph (a), an inmate may be subjected to disciplinary action for assaultive behavior related to an exposure incident. The Bureau's disciplinary procedures (see 28 CFR 541, subpart B) already specify assault as a prohibited act subject to disciplinary action. The provision in paragraph (a) is intended to clarify that an exposure incident could involve assaultive behavior; involvement in an exposure incident, however, does not, in and of itself, constitute grounds for disciplinary action.

Paragraph (b) of new § 549.13 summarizes the provisions previously stated in paragraphs (a), (b), and (c) of former § 549.16. Testing provisions for HIV are also restated in new § 549.18 along with provisions for HBV and are discussed below.

Paragraph (c) of new § 549.13 specifies new correctional procedures to be used in conjunction with the medical diagnosis and evaluation of infectious and communicable diseases. Under paragraph (c)(1), an inmate who refuses such diagnostic procedures and evaluations is subject to an incident report for failure to follow an order. This requirement is intended to encourage the inmate's voluntary cooperation with medically indicated procedures. Paragraph (c)(2) restates medical protocols for isolation or quarantine. Paragraph (c)(3) specifies that when isolation is not practicable, an inmate who refuses to comply with or adhere to the diagnostic process or evaluation shall be involuntarily evaluated or tested. The Bureau believes that the secure and orderly operation of the institution necessitates interim implementation of these provisions.

The provisions of former § 549.14 on work assignments have been transferred to new § 549.16 and are discussed below. A new § 549.14 has been added containing training requirements for inmates pertinent to infectious diseases. This section largely restates the education provisions of former § 549.15 which were pertinent solely to HIV education. In addition to the broadening of subject matter covered (i.e., infectious diseases instead of merely HIV), this section reduces the requirements for supplementing the training given during Admission and Orientation.

As noted above, the provisions of former § 549.15 have been incorporated in new § 549.14. A new § 549.15 has been added on medical isolation and quarantining for infectious diseases which are transmitted through casual contact. This new section adapts standard medical protocols for use in a correctional setting.

The provisions of former § 549.16 have been transferred to new § 549.18 and are discussed below. A new § 549.16 is added containing provisions on duty and housing restrictions. Paragraph (a) of new § 549.16 specifies that the Clinical Director shall assess any inmate with an infectious disease for appropriateness for duties and housing, and that inmates demonstrating infectious diseases which are transmitted through casual contact shall be prohibited from employment in any area until fully evaluated by a health care provider. This new provision, therefore, is an administrative measure intended to ensure that duty and housing restrictions are imposed only after appropriate review by health care providers or as a precautionary measure pending review. Paragraph (b), which derives from the provisions of § 549.14, specifies that inmates may be limited in duty and housing assignments only if their disease could be transmitted despite the use of environmental/engineering controls or personal protective equipment, or when precautionary measures cannot be

implemented or are not available to prevent the transmission of the specific disease. Reference to HIV antibody screening as a criterion for work detail assignment has been removed. The Bureau believes that the provisions of paragraph (b) precisely state the criteria used for both housing and work detail assignment, and consequently there is no need to exclude further criteria. Paragraph (c) restates the provisions of former § 549.12.

The provisions in § 549.17 on confidentiality have been revised for the purpose of indicating wider applicability to chronic infectious diseases, to include reference to release under the Privacy Act, and to include a prohibition against third party disclosure.

The provisions in former § 549.18 have been designated as paragraph (i) of new § 549.18. As revised, new § 549.18 contains miscellaneous provisions pertaining to HIV or HBV. Paragraph (a) restates the provisions of former § 549.11 and, for the sake of emphasis, repeats the advisory on incident reports prescribed by new § 549.13(b). Paragraph (b) restates the provisions of the introductory text of former § 549.16 (non-prescriptive language was not restated for the sake of conciseness). Paragraphs (c) and (d) partly restate the provisions of former §§ 549.16(a) (1) and (2). The remainder of §§ 549.16(a) (1) and (2) have been restated in new § 549.13(b). Paragraph (e) revises the provisions of former § 549.16(b)(1) to limit inmate requests for voluntary HIV/HBV antibody tests to no more than once yearly. Paragraph (f) restates the provisions of former § 549.16(b)(2). Paragraph (g) restates the provisions of former § 549.16(c). Paragraph (h) restates the provisions of former § 549.16(d) and adjusts the timeframe for notification to the United States Probation Office. Paragraph (i) restates the provisions of former § 549.18. Paragraph (j), formerly contained in § 549.19, has been revised to require clinical evaluation and review at least quarterly rather than monthly. This change is being made pursuant to guidelines on managing early HIV infection issued by the Agency for Health Care Policy and Research, Public Health Service. Paragraph (k) restates the provisions contained in former § 549.19.

The provisions on autologous blood banking contained in former § 549.20 have been removed. Under community standards of care, these provisions are considered to be discretionary. Because the typical procedures for blood banking necessitate a disproportionate allocation of Bureau resources (namely, staff escorts to community hospitals and constraints of time schedules), the Bureau has determined that it is impractical to offer this procedure to inmates.

The Bureau is publishing these revisions as an interim rule for two reasons. First, the Bureau has determined that it is important to effect these changes as quickly as possible in order to allow for the judicious management of those contagious diseases which can pose serious problems in the confined environment of a prison. Second, a significant portion of the regulations are restatements of provisions which had previously gone through proposed rulemaking. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered before the rule is finalized.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 549

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 549 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 549—MEDICAL SERVICES

1. The authority citation for 28 CFR part 549 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4005, 4042, 4045, 4081, 4082, (Repealed in part as to offenses committed on or after November 1, 1987), 4241–4247, 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039: 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Subpart A, consisting of §§ 549.10 through 549.20, is revised to consist of §§ 549.10 through 549.18 as follows:

Subpart A—Infectious Diseases

Sec.

Subpart A—Infectious Diseases

§ 549.10 Purpose and scope.

This policy is designed to provide instruction and guidance in the management of infectious diseases in the confined environment of a correctional setting.

§ 549.11 Program responsibility.

(a) The Health Services Administrator (HSA) and Clinical Director (CD) of each institution shall be responsible for the development and implementation of this program.

(b) Each HSA shall designate a member of the clinical health care staff, for example, a physician, dentist, physician assistant, nurse practitioner, or nurse, as the Coordinator of Infectious Diseases (CID).

§ 549.12 Reporting.

The HSA shall ensure that each institution's respective state health department is informed of all cases of reportable infectious diseases. See § 549.17 for reporting requirements of chronic infectious diseases and for Freedom of Information Act requests.

§ 549.13 Medical testing.

(a) *Bloodborne pathogens.* Following an incident in which a staff member or an inmate may have been exposed to bloodborne pathogens, written, informed consent shall be obtained prior to acquiring or processing the source individual's blood or other biological specimen for the purpose of determining an actual exposure to a bloodborne pathogen. In the context of exposure incidents, no inmate shall be tested forcibly or involuntarily, unless such testing is ordered by a court with proper jurisdiction. Inmates may be subjected to disciplinary action for assaultive behavior related to an exposure incident.

(b) *HIV testing.* HIV testing programs are mandatory and include a yearly random sample, yearly new commitment sample, new commitment re-test sample, pre-release testing, and clinically indicated testing. Inmates must participate in all mandatory testing programs. Staff shall initiate an incident report for failure to follow an order for any inmate refusing one of the mandatory HIV testing programs.

(c) *Diagnostics.* (1) An inmate who refuses clinically indicated diagnostic

procedures and evaluations for infectious and communicable diseases shall be subject to an incident report for failure to follow an order; involuntary testing subsequently may be performed in accordance with paragraph (c)(3) of this section.

(2) Any inmate who refuses clinically indicated diagnostic procedures and evaluations for infectious and communicable diseases shall be subject to isolation or quarantine from the general population until such time as he/she is assessed to be non-communicable or the attending physician determines the inmate poses no health threat if returned to the general population.

(3) If isolation is not practicable, an inmate who refuses to comply with or adhere to the diagnostic process or evaluation shall be involuntarily evaluated or tested.

§ 549.14 Training.

The HSA shall ensure that a qualified health care professional provides training, incorporating a question-and-answer session, about infectious diseases to all newly committed inmates, during Admission and Orientation (A&O). Additional training shall be provided at least yearly.

§ 549.15 Medical isolation and quarantining.

(a) The CD, in consultation with the HSA, shall ensure that inmates with infectious diseases which are transmitted through casual contact (e.g., tuberculosis, chicken pox, measles) are isolated from the general inmate population until such time as they are assessed or evaluated by a health care provider.

(b) Inmates shall remain in medical isolation unless their activities, housing, and/or duty assignments can be limited or environmental/engineering controls or personal protective equipment is available to eliminate the risk of transmitting the disease.

§ 549.16 Duty and housing restrictions.

(a) The CD shall assess any inmate with an infectious disease for appropriateness for duties and housing. Inmates demonstrating infectious diseases, which are transmitted through casual contact, shall be prohibited from employment in any area, until fully evaluated by a health care provider.

(b) Inmates may be limited in duty and housing assignments only if their disease could be transmitted despite the use of environmental/engineering controls or personal protective equipment, or when precautionary measures cannot be implemented or are not available to prevent the transmission of the specific disease. The Warden, in consultation with the CD, may exclude inmates, on a case-by-case basis, from work assignments based upon the classification of the institution and the safety and good order of the institution.

(c) With the exception of the Bureau of Prisons rule set forth in subpart E of 28 CFR part 541, there shall be no special housing established for HIV-positive inmates.

§ 549.17 Confidentiality of information.

(a) Medical information relevant to chronic infectious diseases shall be limited to members of the institutional medical staff, institutional psychologist, and the Warden and case manager, as needed, to address issues regarding pre- and post-release management. Prior to an inmate's release, medical information may be shared with the United States Probation Officer in the respective area of intended release for the inmate and, if applicable, with the Community Corrections Manager and the Director of the Community Correctional Center (CCC) for purposes of post-release management and access to care. Any other release of information shall be in accordance with the Privacy Act of 1974.

(b) All parties, with whom confidential medical information regarding another individual is communicated, shall be advised not to share this information, by any means, with any other person. Medical information may be communicated among medical staff directly concerned with a patient's case in the course of their professional duties.

§ 549.18 Human immunodeficiency virus (HIV) and hepatitis B virus (HBV).

(a) During routine intake screening, all new commitments shall be interviewed to identify those who may be HIV- or HBV-infected. Medical personnel may request any inmates identified in this manner to submit to an HIV or HBV test. Failure to comply shall result in an incident report for failure to follow an order.

(b) A seropositive test result alone may not constitute grounds for disciplinary action. Disciplinary action may be considered when coupled with a secondary action that could lead to transmission of the virus, e.g. sharing razor blades.

(c) A sample of all newly incarcerated inmates committed to the Bureau of Prisons ordinarily shall be tested annually.

(d) Additionally, a random sample for HIV of all inmates in the Bureau of Prisons shall be conducted once yearly. Inmates tested in this random sample are not scheduled for follow-up routine retesting.

(e) After consultation with a Bureau of Prisons' health care provider, an inmate may request an HIV/HBV antibody test. Ordinarily, an inmate will not be allowed to test, as a volunteer, more frequently than once yearly.

(f) A physician may order an HIV/HBV antibody test if an inmate has chronic illnesses or symptoms suggestive of an HIV or HBV infection. Inmates who are pregnant, inmates receiving live vaccines or inmates being admitted to community hospitals, if required by the hospital, shall be tested. Inmates demonstrating sexual behavior which is promiscuous, assaultive, or predatory shall also be tested.

(g) (1) An inmate being considered for full-term release, parole, good conduct time release, furlough, or placement in a community-based program such as a Community Corrections Center (CCC) shall be tested for the HIV antibody. An inmate who has been tested within one year of this consideration ordinarily will not be required to submit to a repeat test prior to the lapse of a one-year period. An inmate who refuses to be tested shall be subject to an incident report for refusing an order and will ordinarily be denied participation in a community activity.

(2) A seropositive test result is not sole grounds for denying participation in a community activity. Test results ordinarily must be available prior to releasing an inmate for a furlough or placement in a community-based program. When an inmate requests an emergency furlough, and current (within one year) HIV and HBV antibody test results are not available, the Warden may consider authorizing an escorted trip for the inmate, at government expense.

(h) (1) No later than thirty days prior to release on parole or placement in a community-based program, the Warden shall send a letter to the Chief United States Probation Officer (USPO) in the district where the inmate is being released, advising the USPO of the inmate's positive HIV status. A copy of this letter shall also be forwarded to the Community Corrections Manager. The Community Corrections Manager, in turn, shall notify the Director of the CCC (if applicable). In all instances of notification, precautions shall be taken to ensure that only authorized persons with a legitimate need to know are allowed access to the information.

(2) Prior to an HIV-positive inmate's participation in a community activity

(including furloughs), notification of the inmate's infectious status shall be made:

(i) By the Warden to the USPO in the district to be visited, and

(ii) By the Health Service Administrator to the state health department in the state to be visited, when that state requires such notification.

Notification is not necessary for an escorted trip.

(3) Prior to release on parole, completion of sentence, placement in a community-based program, or participation in an unescorted community activity, an HIV-positive inmate shall be strongly encouraged to notify his/her spouse (legal or common-law) or any identified significant others with whom it could be assumed the inmate might have contact resulting in possible transmission of the virus.

(4) When an inmate is confirmed positive for HIV or HBV, the HSA shall be responsible for notifying the state health departments in the state in which the institution is located and the state in which the inmate is expected to be released, when either state requires such notification. The HSA shall ensure medical staff perform the notification at the time of confirmed positive HIV or HBV antibody tests.

(5) The HSA shall notify the Immigration and Naturalization Service (INS) of any inmate testing positive who is to be released to an INS detainer.

(i) Inmates receiving the HIV or HBV antibody test shall receive pre- and post-test counseling, regardless of the test results.

(j) Health service staff shall clinically evaluate and review each HIV-positive inmate at least once quarterly.

(k) Pharmaceuticals approved by the Food and Drug Administration for use in the treatment of AIDS, HIV-infected, and HBV-infected inmates shall be offered, when indicated, at the institution.

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October 5, 1995

Part IV

Office of Management and Budget

Standard Occupational Classification Revision Policy Committee's Proposals for Revising the SOC's Principles of Classification, Purpose and Scope, and Conceptual Framework; Notice

OFFICE OF MANAGEMENT AND BUDGET

Standard Occupational Classification Revision Policy Committee's Proposals for Revising the SOC's Principles of Classification, Purpose and Scope, and Conceptual Framework

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of solicitation of comments.

SUMMARY: Under title 44 U.S.C. 3504, the Office of Management and Budget (OMB) is seeking public comment on the Standard Occupational Classification Revision Policy Committee's (SOCRPC) proposals for revising the 1980 Standard Occupational Classification (SOC) Manual's principles of classification, purpose and scope, and conceptual framework. In a prior Federal Register notice (February 28, 1995, 60 FR 10998–11002), the public was provided the opportunity to comment on the uses of occupational data; propose changes to the existing 1980 SOC classification principles, purpose and scope, and conceptual options; and review the SOCRPC's proposed revision process. OMB plans another public comment period on the SOCRPC's final recommendations in the fall of 1996 when the SOCRPC will propose changes to the existing *SOC Manual* at the detailed occupation level based on an agreed upon set of classification principles, purpose and scope, and unified conceptual framework. The SOC revision is tentatively scheduled for implementation beginning in July 1997. All Federal agencies that collect occupational data are expected to utilize the new system.

Request for Comments

The SOCRPC welcomes comments with respect to any topic related to occupational classification, but is specifically interested in comments concerning:

(1) The classification principles underlying the new SOC,

(2) The purpose and scope of the new SOC,

(3) The unified conceptual framework used to guide the revision, and

(4) Public proposals for changes to the existing SOC at the detailed 4-digit level based on the principles, purpose and scope, and conceptual framework presented in this notice.

DATES: To ensure consideration in the development of the SOC, all comments must be in writing and received on or before November 17, 1995.

ADDRESSES: Please send comments to Thomas J. Plewes, Chairman, Standard Occupational Classification Revision Policy Committee, U.S. Bureau of Labor Statistics, Suite 4945, 2 Massachusetts Avenue, N.E., Washington, DC 20212.

Electronic Availability and Comment

This document is available on the Internet from the Bureau of Labor Statistics via World Wide Web (WWW) browser and E-mail. To obtain this document via WWW browser, connect to ''http://stats.bls.gov/blshome.html'' then select ''Surveys and Programs,'' then select ''Occupational Employment Statistics,'' then select ''Standard Occupational Classification Documents.'' To obtain this document via E-mail or to submit comments, send a message to socrevision@bls.gov (use only lower case letters). Comments received at this address by the date specified above will be included as part of the official record.

FOR FURTHER INFORMATION CONTACT: Paul Hadlock, U.S. Bureau of Labor Statistics, E-mail Hadlock–@bls.gov, telephone number (202) 606–6502, FAX (202) 606–6645.

SUPPLEMENTARY INFORMATION:

Background

The Standard Occupational Classification (SOC) Manual was last revised in 1980. Furthermore, it has not been fully utilized by Federal occupational data gathering agencies which have frequently departed from the standard over the years as new occupations have emerged and opportunities for improvements have presented themselves. In view of these circumstances, the Office of Management and Budget (OMB) has acknowledged the need to develop a new SOC and obtain the cooperation of all Federal occupational data collection agencies in using the new standard.

In its February 28, 1995, Federal Register notice, OMB announced the formation of the Standard Occupational Revision Policy Committee, chaired by the Bureau of Labor Statistics (BLS), with representatives from the Bureau of the Census, U.S. Department of Commerce; the Employment and Training Administration (ETA), U.S. Department of Labor; the Office of Personnel Management; and the Defense Manpower Data Center, U.S. Department of Defense. *Ex officio* members include the Office of Management and Budget, the National Science Foundation, and the National Occupational Information Coordinating Committee. The SOCRPC reports to OMB, which has responsibility for all economic classification systems (other than those for international trade).

Following the issuance of the first Federal Register notice, the Employment and Training Administration and the Bureau of Labor Statistics sponsored a Seminar on Research Findings in April 1995, on behalf of the SOCRPC. The seminar papers provided insights useful in the decisionmaking process concerning conceptual issues, principles of classification, compatibility with existing databases, and measurability. The seminar provided a forum for discussion of key issues related to the development of the new SOC. These were separated into three main topics: (1) user needs, (2) conceptual options, and (3) measurement issues. In addition to the authors who presented their papers, the seminar was attended by representatives of agencies involved directly with the SOC revision and by other interested parties from government, private industry, and research organizations. The papers from the seminar were published in the SOCRPC's *Seminar on Research Findings, April 11, 1995* and are available through the BLS information contact.

As a result of responses to the previous Federal Register notice and the Committee's other activities, the SOCRPC, with the concurrence of OMB, has agreed that a common occupational classification system for the United States is needed and should be put in place.

Part 1: Standard Occupational Classification Principles

The SOCRPC recommends that the new Standard Occupational Classification system should conform to a set of common principles, the immediate purpose of which would be to guide the development of the new classification structure:

(1) The Classification should cover all occupations in which work is performed for pay or profit, including work performed in family-operated enterprises by family members who are not directly compensated. It should exclude occupations unique to volunteers.

(2) The Classification should reflect the current occupational structure of the United States and have sufficient flexibility to assimilate new occupations into the structure as they become known.

(3) While striving to reflect the current occupational structure, the Classification should maintain linkage

with past systems. The importance of historical comparability should be weighed against the desire for incorporating substantive changes to occupations occurring in the work force.

(4) Occupations should be classified based upon work performed, skills, education, training, licensing, and credentials.

(5) Occupations should be classified in homogeneous groups that are defined so that the content of each group is clear.

(6) Each occupation should be assigned to only one group at the lowest level of the Classification.

(7) The employment size of an occupational group should not be the major reason for including or excluding it from separate identification.

(8) Supervisors should be identified separately from the workers they supervise wherever possible in keeping with the real structure of the world of work. An exception should be made for professional and technical occupations where supervisors or lead workers should be classified in the appropriate group with the workers they supervise.

(9) Apprentices and trainees should be classified with the occupations for which they are being trained, while helpers and aides should be classified separately since they are not in training for the occupation they are helping.

(10) Comparability with the International Standard Classification of Occupations (ISCO–88) should be considered in the structure, but should not be an overriding factor.

Request for Comments

The Committee invites comments on the classification principles proposed for the new SOC.

Part 2: Purpose and Scope

In addition to developing classification principles, it is also important to define the purpose and scope of the new SOC. The Committee agrees with many of the original goals and purposes of the 1980 SOC. The current effort will emphasize the OMB mandate for the use of the SOC by all Federal occupation data gatherers and the need for collecting and maintaining the data required to adjust and improve the SOC on a regular basis.

The basic purpose of the Standard Occupational Classification is to provide a mechanism for referencing and aggregating occupation-related data. The system is designed to maximize the analytical utility of statistics on labor force, employment, income, and other occupational data collected for a variety of purposes by various agencies of the United States Government, State and local government agencies, professional associations, labor unions, research organizations, and private industry.

The SOC provides a coding system and taxonomy for identifying and classifying occupations within a framework suitable for a wide variety of users both in and out of government. Due to the extensive amount of occupational detail existing within the SOC and the myriad uses for the data, different users will likely have varying needs for levels of detail. The SOC is constructed with the flexibility to allow for this range of detail requirements. It is intended that all major Federal occupational data gatherers will use this classification as the basic framework for their information collections. The SOC thus will serve as the Nation's comprehensive occupational classification system.

To allow for changes in the structure of occupations, periodic reviews and revisions will draw on the experience gained in using the system.

Request for Comments

The Committee invites comments on the purpose and scope of the SOC.

Part 3: The Conceptual Framework for the New Standard Occupational Classification

The February Federal Register notice provided four options for a conceptual framework for the new SOC. These were: (1) type-of-work performed, (2) the International Standard Classification of Occupations (ISCO–88), (3) skills-based systems, and (4) economic-based systems.

Based upon comments received in response to the Federal Register notice, evaluation of the papers from the Seminar on Research Findings, and much deliberation by members of the SOCRPC, the Committee has selected a hybrid concept that focuses on type-of-work performed but incorporates skills-based considerations as the conceptual framework for the new SOC. The committee based its decision, in part, on the need to maximize the ability of users to link the new system with the historical system. The SOCRPC recognized that, in view of the predominant uses of the classification system, a skills-based taxonomy is also needed.

A skills-based system is defined as one that considers the person's ability to carry out the tasks and duties of a given job. Skill has two dimensions. The first is related to the complexity and range of tasks and duties including knowledge and experience, which are often defined by preparation levels and credentials, considered necessary for *new entrants* to an occupation (skill level). The second is related to both the type-of-work performed and the nature of the work activities. These encompass all aspects of the work including materials handled, tools and equipment used, and kinds of goods and services produced (skill type). Though both will be considered, it is expected that skill type will be the predominant dimension considered in developing the new SOC, because type is more measurable than level.

The Committee proposes the use of the BLS Occupational Employment Statistics (OES) occupational classification system as the starting point for the new SOC framework. The Committee also proposes the use of the O*NET (The Occupational Information Network), ETA's new automated replacement for the Dictionary of Occupational Titles (DOT), to inform the development of the new SOC.

During the period of preparation of the new system, the SOCRPC will continue to monitor developments in the field, including experience in other countries, and will evaluate adding skills-based components to the SOC when agencies can measure and collect them, or when a dependable skills-oriented database is established. In particular, the SOCRPC will continue to evaluate the measurability of competencies—those attributes that the person brings to the job that reflect, in addition to skill level and type, attitudes and the like.

Request for Comments

The Committee invites comments on the proposal for the conceptual basis of the SOC, and on the proposal to use the BLS Occupational Employment Statistics (OES) occupational classification system as the starting point for the creation of the new SOC framework.

Part 4: Detailed Occupational Level Changes to the Existing SOC Based on the Principles and Conceptual Framework Presented in This Federal Register Notice

The Committee is interested in obtaining as much information as possible concerning the needs of the public for changes to specific occupational categories. Many of the issues related to the concepts and principles for the new SOC are broad-based, e.g., whether or not emerging, highly-technical jobs are adequately represented. However, as part of the revision, occupations at the most detailed levels must be considered. Thus, the SOCRPC is seeking suggestions for detailed occupational

changes that add or delete current occupations within the 1980 SOC.

Request for Comments

All comments, however specific or general in nature, whether comprehensive to the entire occupational structure or pertinent to only one occupation, are welcome.

Work Plan

The SOCRPC intends to begin the detailed development of the new SOC with the formation of work teams from the Federal agencies in December 1995. Public comments and the input from member agencies will form the basis for the development of the new classification structure. The specific milestones for activities of the SOCRPC are as follows:

(1) Work teams established to begin work on the SOC detailed revision. (December 1995)

(2) Draft SOCRPC recommendations on the detailed SOC revision completed. (June 1996)

(3) Seminar to discuss the draft SOCRPC recommendations and the implications of the new SOC for other occupational classification systems. (August 1996)

(4) Publish Federal Register notice of final SOCRPC recommendations for public comment. (September 1996)

(5) Publish Federal Register notice of final OMB decisions on SOC. (January 1997)

(6) Development and publication of new *SOC Manual.* (July 1997)

Public Review Procedure

All comments and proposals received in response to this notice will be available for public inspection at the Bureau of Labor Statistics during normal business hours, 8:15 a.m. to 4:45 p.m., in Suite 4945, 2 Massachusetts Avenue, N.E., Washington DC 20212. Please call BLS on (202) 606–6402 to obtain an appointment to enter the suite. The SOCRPC final recommendations will be published in the Federal Register for public review and comment prior to final action by OMB.

References

(1) The *Standard Occupational Classification Manual, 1980,* was published by the U.S. Department of Commerce, Office of Federal Statistical Policy and Standards and can be found in many reference libraries. It is now available in print and 9-track magnetic tape formats from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, catalog number PB81–162521, telephone number (703) 487–4650, FAX (703) 321–8547.

(2) Standard Occupational Classification Revision Policy Committee, ''Summary of Comments on the February 28, 1995 Federal Register Notice concerning the Standard Occupational Classification (SOC) Revision Policy Committee Proposal to Revise the SOC,'' May 1995. Available from the Bureau of Labor Statistics, 2 Massachusetts Avenue, N.E., Washington DC, 20212, telephone number (202) 606–6502, FAX (202) 606–6645.

(3) Standard Occupational Classification Revision Policy Committee, Seminar on Research Findings, April 11, 1995, September 1995. Available from the Bureau of Labor Statistics, 2 Massachusetts Avenue, N.E., Washington DC, 20212, telephone number (202) 606–6502, FAX (202) 606–6645.

(4) The definitions and occupational structure for the Occupational Employment Statistics (OES) occupational classification system can be obtained electronically or in hard copy by contacting the Bureau of Labor Statistics, OES Program, Suite 4840, 2 Massachusetts Avenue, N.E., Washington DC, 20212, telephone number (202) 606–6569, FAX (202) 606–6645.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

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Federal Register

Thursday
October 5, 1995

Part V

The President

Memorandum of October 3, 1995—Delegation of Authority Under the Assignment of Claims Act

Federal Register
Vol. 60, No. 193
Thursday, October 5, 1995

Presidential Documents

Title 3—

The President

Memorandum of October 3, 1995

Delegation of Authority Under the Assignment of Claims Act

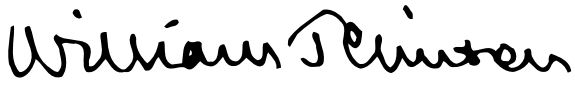
Memorandum for the Heads of Executive Departments and Agencies

Section 2451 of the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (41 U.S.C. 15) (''Act''), provides, in part, that ''[a]ny contract of the Department of Defense, the General Services Administration, the Department of Energy or any other department or agency of the United States designated by the President, except [contracts where] . . . full payment has been made, may, upon a determination of need by the President, provide or be amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under [the] contract shall not be subject to reduction or set-off.''

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby designate all other departments and agencies of the United States as subject to this provision. Furthermore, I hereby delegate to the Secretaries of Defense and Energy, the Administrator of General Services, and the heads of all other departments and agencies, the authority under section 2451 of the Act to make determinations of need for their respective agency's contracts, subject to such further guidance as issued by the Office of Federal Procurement Policy.

The authority delegated by this memorandum may be further delegated within the departments and agencies.

This memorandum shall be published in the Federal Register.



THE WHITE HOUSE,
Washington, October 3, 1995.

[FR Doc. 95–25012
Filed 10–4–95; 11:13 am]
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